(26,127)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 660.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, PLAINTIFF IN ERROR,

vs.

FRIEND WM. RICHARDSON, AS TREASURER OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 20, 1917.

a In the Supreme Court of the State of California.

S. F. No. 8381.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff and Appellant,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

TRANSCRIPT ON APPEAL.

From the Judgment of the Superior Court of the State of California in and for the City and County of San Francisco.

Honorable J. M. Seawell, Judge.

Pillsbury, Madison & Sutro, Standard Oil Building, San Francisco, Attorneys for Appellant.
U. S. Webb, Attorney General.
Raymond Benjamin, Chief Deputy Attorney General, Attorneys for Respondent.

Filed this 7th day of June, 1917. B. Grant Taylor, Clerk, by Dryden, Deputy Clerk.

1 In the Supreme Court of the State of California.

S. F. No. —.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff and Appellant,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

TRANSCRIPT ON APPEAL.

From the Judgment of the Superior Court of the State of California in and for the City and County of San Francisco.

Honorable J. M. Seawell, Judge.

2 In the Superior Court of the State of California in and for the City and County of San Francisco.

No. 71759. Dept. No. 1.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff.

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant.

Amended Complaint.

Now comes The Bank of California, National Association, plaintiff in the above entitled action, and by leave of court first had and obtained files the following as its amended complaint in said action; and, for cause of action against defendant in said action, alleges:

I.

That plaintiff was, prior to February 5, 1910, a banking corporation organized under the laws of the State of California; that on February 5, 1910, plaintiff was converted into, ever since has been, and now is, a national banking association under the "National Bank Act" of the United States of America with an authorized and subscribed capital stock of 85,000 shares of the par value of $100 each, and doing a general banking business in the
3 City and County of San Francisco, in the State of California.

That the defendant, Friend Wm. Richardson, is the Treasurer of the State of California.

II.

That prior to the first Monday in March, in the year 1915, plaintiff, by resolution of its board of directors, did request the State Board of Equalization of the State of California to assess to, and in the name of, plaintiff the entire taxable value of all of the said shares of the capital stock of plaintiff, as determined by said State Board, instead of assessing such shares to, and in the name of, the individual stockholders or shareholders owning the same.

III.

That between the first Monday in March, and the third Monday before the first Monday in July, in the year 1915, the said Board of Equalization assessed the said 85,000 shares of the capital stock of said The Bank of California, National Association, and valued the same for taxation at the sum of $15,775,252.67, and assessed

and levied a tax thereon of one and two-tenths per centum, amounting to the sum of $189,303.04, for the fiscal year ending June 30th, 1916, and assessed and taxed said shares to the plaintiff.

4 IV.

That prior to February 5, 1910, and at all times thereafter, plaintiff was, and now is, the owner of 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., a national banking association organized and existing under and by virtue of said "National Bank Act," and doing a general banking business in the City of Sacramento, State of California.

V.

That prior to February 5, 1910, and at all times thereafter, plaintiff was, and now is, the owner of 1001 shares of the capital stock of The Mission Bank, a corporation organized and existing under and by virtue of the laws of the State of California, and doing a general banking business in the said City and County of San Francisco, State of California.

VI.

That said Board of Equalization, in assessing said 85,000 shares of the capital stock of said plaintiff, as aforesaid, and in determining the value thereof for such taxation, included therein the value of said 2501 shares of the capital stock of The National Bank of D. O. Mills & Co.; which said value was fixed and determined by said board to be $625,546.30, and was included in said assessment of $15,775,252.67, and made a part of said assessment of $15,775,-252.67.

5 VII.

That said Board of Equalization, in assessing said 85,000 shares of the capital stock of plaintiff, as aforesaid, and in determining the value thereof for such taxation included therein the value of said 1001 shares of the capital stock of The Mission Bank; which said value was fixed and determined by said board to be $121,916.52, and was included in said assessment or sum of $15,775,252.67, and made a part of said assessment of $15,775,252.67.

VIII.

That notwithstanding the said Board of Equalization had assessed and valued the said 85 000 shares, as aforesaid, and assessed and levied the said tax of $189,303.04 thereon to plaintiff, the said Board of Equalization, between the first Monday in March and the third Monday before the first Monday in July, in the year 1915, in assessing and taxing all of the shares of the capital stock of The National Bank of D. O. Mills & Co., assessed said 2501 shares of

the capital stock of The National Bank of D. O. Mills & Co., owned by plaintiff, as aforesaid, and valued the same for taxation for said year 1915, at $625,546.30; and for said year 1915, assessed and levied thereon against plaintiff, as the owner of said 2501 shares, as aforesaid, a tax of one and two-tenths per centum, amounting to $7506.56; and assessed and taxed said 2501 shares to the plaintiff.

6

IX.

That notwithstanding the said Board of Equalization had assessed and valued said 85,000 shares, as aforesaid, and assessed and levied the said tax of $189,303.04 thereon to the plaintiff, the said Board of Equalization, between the first Monday in March and the third Monday before the first Monday in July, in the year 1915, in assessing and taxing all of the shares of the capital stock of The Mission Bank, assessed the said 1001 shares of the capital stock of The Mission Bank, owned by plaintiff, as aforesaid, and valued the same for taxation for said year 1915, at $121,916.52, and for said year 1915, assessed and levied thereon against plaintiff, as the owner of said shares, as aforesaid, a tax of one and two-tenths per centum, amounting to $1463; and assessed and taxed said 1001 shares to the plaintiff.

X.

That thereafter, and after the "record of assessments for state taxes," for the year 1915, had been delivered by the secretary of the said Board of Equalization to the Controller of the State of California, and the said sum of $189,303.04, the said taxes assessed and levied on said 85,000 shares, as aforesaid, by said Board of Equalization to plaintiff, had become due or payable, the plaintiff paid to said Controller the first instalment of said taxes or one-half thereof, amounting to $94,651.52. Said first instalment
7 thereof was paid under protest in writing, which said protest was executed by plaintiff and filed with the said Controller, at the time of the payment of the said taxes; and that a copy of said protest is hereunto annexed, marked exhibit "A," and by this reference thereto made a part and parcel hereof.

XI.

That after said "record of assessments for state taxes," for said year 1915, had been delivered to said Controller, as aforesaid, and said sum of $7,506.56, the said taxes assessed and levied *in* said 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., as aforesaid, by the said Board of Equalization to plaintiff, had become due and payable, the plaintiff paid to said Controller the first instalment of said taxes, or one-half thereof, amounting to $3,753.28, under protest in writing; that said protest was executed by plaintiff and by said The National Bank of D. O. Mills & Co., and was filed

with said Controller at the time of the payment of said taxes; and that a copy of said protest is hereunto attached, marked exhibit "B," and by this reference thereto made a part and parcel hereof.

XII.

That after the said "record of assessments for state taxes," for the said year 1915, had been delivered to said Controller, as aforesaid, and the said sum of $1,433, the said taxes assessed and levied on said 1001 shares of the capital stock of said The Mission Bank, as aforesaid, by the said Board of Equalization to plaintiff, had become due or payable, the plaintiff paid to the said Controller the first instalment of said taxes, or one-half thereof, amounting to $731.50, under protest in writing; that said protest was executed by plaintiff and by said The Mission Bank, and was filed with said Controller at the time of the payment of said taxes; and that a copy of said protest is hereunto annexed, marked exhibit "C," and by this reference thereto made a part and parcel hereof.

XIII.

That thereafter, and after the "record of assessments for state taxes," for the year 1915, had been delivered by the secretary of the said Board of Equalization to the Controller of the State of California, and the said sum of $189,303.04, the said taxes assessed and levied on said 85,000 shares, as aforesaid, by said Board of Equalization to said plaintiff, had become due and payable, and on or before the first Monday in February, 1916, the plaintiff paid to said Controller the second instalment of said taxes, or one-half thereof, amounting to $94,651.52, said second instalment thereof being paid under protest in writing, which said protest was executed by plaintiff and filed with said Controller at the time of the payment of said taxes; and that a copy of said protest is hereunto annexed, marked exhibit "A," and by this reference thereto made a part and parcel hereof.

XIV.

That after said "record of assessments for state taxes," for said year 1915, had been delivered to said Controller, as aforesaid, and said sum of $7,506.56, the said taxes assessed and levied on said 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., as aforesaid, by the said Board of Equalization to plaintiff, had become due and payable, the plaintiff paid to said Controller the second instalment of said taxes, or one-half thereof, amounting to $3,753.28, under protest in writing; that said protest was executed by plaintiff and by said The National Bank of D. O. Mills & Co., and was filed with said Controller at the time of the payment of said

taxes; and that a copy of said protest is hereunto attached, marked exhibit "B," and by this reference thereto made a part and parcel hereof.

XV.

That after the said "record of assessments for state taxes," for the said year 1915, had been delivered to said Controller, as aforesaid, and the said sum of $1,463, the said taxes assessed and levied on said 1001 shares of the capital stock of said The Mission Bank, as aforesaid, by the said Board of Equalization to plaintiff, had become due or payable, the plaintiff paid to the said Controller the second instalment of said taxes, or one-half thereof, amounting to $731.50, under protest in writing; that said protest was executed by plaintiff and by said The Mission Bank, and was filed with said Controller at the time of the payment of said taxes; and that a copy of said protest is hereunto annexed, marked exhibit "C," and by this reference thereto made a part and parcel hereof.

XVI.

That all of the assessments and levies of taxes, hereinbefore averred to have been made by the said Board of Equalization, were so made by said Board under the authority conferred by section 14 of article XIII of the Constitution of the State of California and by the statutes of the State of California, enacted April 1st, 1911, to carry into effect said section 14 of article XIII of said Constitution, and the amendments to said statutes.

XVII.

Plaintiff hereby especially claims that said section 14 of article XIII of the Constitution of the State of California, and the said statutes passed in pursuance thereof, in so far as they require, or permit, the taxation to it, as owner, of the said 1001 shares of the capital stock of The Mission Bank, as was done by said Board of Equalization, as aforesaid, violate, and are in contravention of, the provisions of the last clause of section 8 of article I of the Constitution of the United States, and of section 5219 of the Revised Statutes of the United States, which do not confer the power to any state, and forbid any state, to tax personal property to a national banking association; and are, to that extent, void.

XVIII.

Plaintiff further hereby especially claims that, because said section 14 of article XIII of the Constitution of the State of California and the said statutes passed in pursuance thereof are void, to the extent and for the reasons averred in paragraph XVII of this complaint, said section 14 and said statutes confer no power upon said State Board of Equalization to tax the value of the said 1001 shares of The

Mission Bank more than once; and that, therefore, said section 14 of article XIII of the Constitution of the State of California and the said statutes passed in pursuance thereof, in so far as they require or permit the taxation of the said 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., owned by plaintiff, in the manner in which said 2501 shares were taxed by said board, as aforesaid, viz., by taxing the value of said 2501 shares directly to plaintiff as owner thereof, and including the value thereof in the assessment of the shares of the capital stock of plaintiff, upon which a
12 tax was also levied against plaintiff, violate and are in contravention of the provisions of the last clause of section 8 of article I of the Constitution of the United States and of section 5219 of the Revised Statutes of the United States, which forbid any state to tax the shares of a national banking association at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state.

Wherefore, plaintiff prays judgment in and for the sum of seven thousand five hundred and six and 56/100 dollars ($7,506.56), the tax paid on said 2501 shares; for the sum of one thousand four hundred and sixty three dollars ($1463), the tax paid on said 1001 shares, and for its costs of suit.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Irving F. Moulton, being first duly sworn, deposes and says: That he is an officer, to wit, the vice president and cashier, of The Bank of California, National Association, a corporation, plaintiff in the within entitled action; that he has read the foregoing amended complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein
13 stated on information or belief, and as to those matters that he believes it to be true.

IRVING F. MOULTON.

Subscribed and sworn to before me this 8th day of March, 1917.
[SEAL.] JAMES MASON,
Notary Public in and for the City and County of San Francisco, State of California.

EXHIBIT "A."

To Hon. John S. Chambers, Controller of the State of California, and Hon. Friend W. Richardson, Treasurer of the State of California.

SIRS: The sum of $94,651.52, being one-half of the taxes of $189,303.04, levied and assessed to The Bank of California, National Association, a corporation organized and existing under the "Na-

tional Bank Act" of the United States of America, for the fiscal year ending June 30th, 1916, on the 85,000 shares of the capital stock of said association, which 85,000 shares were at twelve o'clock noon on the first Monday in March, 1915, owned and held by the shareholders of said association and which were thereafter assessed or valued by the State Board of Equalization of the State of
14 California at the sum of $15,775,252.67, and upon which thereafter said Board of Equalization levied and assessed a tax of one and two-tenths per centum upon said assessed value, to wit, upon said sum of $15,775,252.67, to said The Bank of California, National Association, is herewith paid under protest upon the grounds hereinafter mentioned;

Prior to the making of said assessment and prior to the assessment and levy of said taxes, said The Bank of California, National Association, as required by said Board of Equalization of the State of California and the provisions of section 12 of that certain Act of the Legislature of the State of California entitled, "An act to carry into effect the provisions of section 14 of article XIII of the Constitution of the State of California, as said Constitution was amended November 8th, 1910, providing for the separation of state from local taxation, and providing for the taxation of public service and other corporations, banks and insurance for the benefit of the state; all relating to revenue and taxation," approved April 1st, 1911, made and filed with the said Board of Equalization of the State of California, a sworn statement, which said sworn statement is hereby specially referred to and made a part hereof as fully as though set out herein in full. By section 14 of article 13 of the Constitution of the State of California and section 12 of said act, The Bank of California, National Association, is made liable to the State of
15 California for the whole of said taxes so assessed and levied as aforesaid.

The said sum of $94,651.52, being one-half of said taxes upon the shares of the capital stock of said The Bank of California, National Association, assessed, levied and taxed as aforesaid for said fiscal year, is herewith paid under protest for and on behalf of the owners and holders of said shares and for and on its own behalf, upon the following grounds.

The tax hereinafter mentioned and levied and assessed upon the 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., hereinafter mentioned and amounting to the sum of $7,506.56, is void upon the following grounds.

The tax hereinafter mentioned and levied and assessed upon the 1001 shares of the capital stock of The Mission Bank, hereinafter mentioned and amounting to the sum of $1463, is void upon the following grounds.

The said tax of $189,303.04, levied and assessed upon said 85,000 shares of the capital stock of The Bank of California, National Association, and amounting to the sum of $189,303.04, is void upon the following grounds.

The whole of the assessment of said 85,000 shares for the fiscal year 1915-16 by said board is void upon the following grounds.

Part of said assessment of said 85,000 shares to wit, the sum of $625,546.30, the assessed value for said fiscal year of said
16 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., and included in said sum of $15,775,252.67, said assessed value of said 85,000 shares, is void upon the following grounds.

Part of said assessment of said 85,000 shares, to wit, the sum of $121,913.52, the assessed value for said fiscal year of 1001 shares of the capital stock of The Mission Bank, and included in said sum of $15,775,252.67, said assessed value of said 85,000 shares, is void upon the following grounds.

Part of said tax of $189,303.04, to wit, the tax levied and assessed upon said 2501 shares, amounting to the sum of $7,506.56, and included in said sum of $189,303.04, is void upon the following grounds.

Part of said tax of $189,303.04, to wit, the tax levied and assessed upon said 1001 shares, amounting to the sum of $1,463, and included in said sum of $189,303.04, is void upon the following grounds.

The following are said grounds:

At 12 o'clock noon on the first Monday in March, 1915, the authorized and issued capital stock of The Bank of California, National Association, was 85,000 shares, of the par value of $100 each.

At said time, among the assets of said association and owned by it, were 2501 shares of the capital stock of said The National Bank of D. O. Mills & Co., a corporation organized under said "National Bank Act," and 1001 shares of the capital stock of said The
17 Mission Bank, a corporation organized and existing under the laws of the State of California and doing a general banking business in said state.

Said 2501 shares were and are assessed and taxed to said association for the fiscal year 1915-16 by said board in assessing the shares of the capital stock of said The National Bank of D. O. Mills & Co., were so assessed or valued at the sum of $625,546.30 by said board, and were so assessed and taxed to said association at the sum of $7,506.56 for said fiscal year.

Said 1001 shares were and are assessed and taxed to said association for said fiscal year by said board in assessing the shares of the capital stock of said The Mission Bank, were so assessed or valued at the sum of $121,916.52 by said board and were so assessed and taxed to said association at the sum of $1,463 for said fiscal year.

Said 85,000 shares were assessed and taxed to said association for said fiscal year by said board, were so assessed or valued by said board at the sum of $15,775,252.67, and were so assessed and taxed to said association at the sum of $189,303.04 for said fiscal year.

In so assessing or valuing said 85,000 shares at the sum of $15,775,252.67, the said Board of Equalization of the State of California included in said sum of $15,775,252.67 said sum of $625,546.30, said assessment or value of said 2501 shares; and in so assess-
18 ing or valuing said 85,000 shares at the sum of $15,775,252.67, the said board also included in the said sum of $15,-

775,252.67, said sum of $121,916.52, said assessment or value of said 1001 shares.

There was levied and assessed upon said 2,501 shares of the capital stock of said The National Bank of D. O. Mills & Co. for said fiscal year a tax of one and two-tenths per centum upon the said value of said 2501 shares to wit, upon said sum of $625,546.30, amounting to the sum of $7,506.56, and the said shares were so assessed and taxed for said fiscal year to said association, the owner of said 2501 shares.

There was levied and assessed upon said 1001 shares of the capital stock of said The Mission Bank for said fiscal year a tax of one and two-tenths per centum upon the said value of said 1001 shares, to wit, upon said sum of $121,916.52, amounting to the sum of $1,463, and the said shares were so assessed and taxed for said fiscal year to said association, the owner of said 1001 shares.

Notwithstanding the said board had levied and assessed upon said 2501 shares and also upon said 1001 shares said tax of one and two-tenths per centum, the said board, in assessing or valuing the said 85,000 shares at the sum of $15,775,252.67 for said fiscal year, included in and made part of said sum of $15,775,252.67 the said sum of $625,546.30, said value of said 2501 shares, and the said
19 sum of $121,916.52, said value of said 1001 shares; and in assessing and taxing said 85,000 shares to said association, said board again and for the second time for said fiscal year assessed and taxed to said association the said 2501 shares and said 1001 shares, and for the second time for said fiscal year assessed and levied said tax of one and two-tenths per centum upon said 2501 shares and upon said 1001 shares.

That by reason of the aforesaid actions and doings of the said board, the said tax of one and two-tenths per centum for said fiscal year was levied and assessed twice upon said 2501 shares and twice upon said 1001 shares, and said 2501 shares were assessed and taxed to said association twice for said fiscal year for said tax of one and two-tenths per centum upon the said value of said 2501 shares, to wit, upon said sum of $625,546.30, and said 1001 shares were assessed and taxed to said association twice for said fiscal year and for said tax of one and two-tenths per centum upon the said value of 1001 shares, to wit, upon the said sum of $121,916.52.

That by reason of the aforesaid actions and doings of the said board, there was and is levied and assessed twice for said fiscal year upon the said value of said 2501 shares, to wit, upon the said sum of $625,546.30, a tax of $7,506.56, or of one and two tenths per centum; and there was and is levied and assessed twice for said fiscal
20 year upon the said value of said 1001 shares, to wit, upon said sum of $121,916.52, a tax of $1463, or of one and two-tenths per centum.

In assessing the value as aforesaid of said 85,000 shares of the capital stock of said association, said Board of Equalization included in and made part of said sum of $15,775,252.67 the said assessed value of said 2501 shares of the capital stock of said The National Bank of D. O. Mills & Co., to wit, said sum of $625,546.30.

Said Board of Equalization, in levying and assessing for said fiscal year said tax of one and two-tenths per centum on said sum of $625,546.30, levied and assessed said tax of one and two-tenths per centum twice, and said 2501 shares were thus doubly assessed and taxed for the same tax for the same fiscal year.

In assessing the value as aforesaid of said 85,000 shares of the capital stock of said association, said Board of Equalization included in and made part of said sum of $15,775,252.67 the said assessed value of said 1001 shares of the capital stock of said The Mission Bank, to wit, said sum of $121,916.52.

Said Board of Equalization, in levying and assessing for said fiscal year said tax of one and two-tenths per centum on said sum of $15,775,252.67, and also said tax of one and two-tenths per centum on said sum of $121,916.52, levied and assessed said tax of
21 one and two-tenths per centum twice, and said 1001 shares were thus doubly assessed and taxed for the same tax for the same fiscal year.

The assessment and taxation of said 85,000 shares of the capital stock of said association for said fiscal year 1915-16 in the manner and method aforesaid by said Board of Equalization is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of California.

The assessment and taxation of said 85,000 shares in the manner and method aforesaid by said Board of Equalization is arbitrary, discriminatory and unjust.

The assessment and taxation of the shares of capital stock of the national banks located in the State of California, in the manner and by the method provided by said act of April 1st, 1911, is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of said state and in conflict with the provisions of section 5219 of the Revised Statutes of the United States.

The assessment and taxation of said shares of capital stock, in the manner provided by said act, deprives the owners of said shares of capital stock of their property without due process of law.

That the said assessment, levy and taxation is made upon the value of each share of the capital stock of said national banks with-
22 out making or providing for a, or any, due deduction from the value of the property, or the accumulated surplus, or undivided profits, or capital of said banks, of United States bonds, state and municipal bonds, shares of the capital stock of corporations, shares of the capital stock of corporations created under the laws of the State of California and other non-taxable securities owned by them, or of the assets of said national banks invested in said United States bonds, municipal bonds, shares of the capital stock of corporations, shares of the capital stock of corporations created under the laws of the State of California, or other non-taxable securities.

EXHIBIT "B."

To Hon. John S. Chambers, Controller of the State of California, and Hon. Friend W. Richardson, Treasurer of the State of California.

SIRS: The sum of $3,753.28, being one-half of the taxes assessed and levied for the fiscal year ending June 30th, 1916, to The Bank of California, National Association, on 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., which 2501 shares were, at 12 o'clock noon and prior thereto, on the first Monday in March, 1915, and ever since have been, owned and held by
23 said The Bank of California, National Association, and which were thereafter assessed by the State Board of Equalization of the State of California and taxed to said The Bank of California, National Association, is herewith paid under protest upon the following grounds:

The National Bank of D. O. Mills & Co. is and was, at 12 o'clock noon on the first Monday in March, 1915, a corporation organized and existing under the "National Bank Act" of the United States of America and doing a general banking business in the City of Sacramento, in the State of California.

The Bank of California, National Association, is and was at said time, a corporation organized and existing under said "National Bank Act" and doing a general banking business in the City and County of San Francisco, in said state.

The authorized and issued capital stock of said association is and was at said time 85,000 shares, of the par value of $100 each.

After the first Monday in March, 1915, the value of said 85,000 shares of the capital stock of The Bank of California, National Association, was assessed by said State Board of Equalization—after deducting the value, as assessed for county taxes, of the real estate owned by said association at 12 o'clock noon on the first Mon-
24 day in March, 1915, and taxed for county purposes—at the sum of $15,775,252.67.

Thereafter said State Board of Equalization levied and assessed upon said 85,000 shares of the capital stock of said association, for the fiscal year ending June 30th, 1916, a tax of one and two-tenths per centum upon the said assessed value of said 85,000 shares, to wit, upon said sum of $15,775,252.67, which tax amounted to and is the sum of $189,303.04.

After the first Monday in March, 1915, the value of said 2501 shares of the capital stock of said The National Bank of D. O. Mills & Co., owned and held by said association at 12 o'clock noon of the first Monday in March, 1915, was assessed by said State Board of Equalization at the sum of $625,546.30; and thereafter said State Board of Equalization levied and assessed upon said 2501 shares for the fiscal year ending June 30th, 1916, a tax of one and two-tenths per centum upon the said assessed value of said 2501 shares, to wit, upon said sum of $625,546.30, which tax amounted to and is the sum of $7,506.56.

In assessing the value, as aforesaid, of the 85,000 shares of the capital stock of said association, said State Board of Equalization included in and made a part of said sum of $15,775,252.67, the said assessed value of said 2501 shares of the capital stock of said The National Bank of D. O. Mills & Co., to wit, said sum of $625,-546.30.

25 Said State Board of Equalization, in levying and assessing for said fiscal year said tax of one and two-tenths per centum on said sum of $15,775,252.67, and also said tax of one and two-tenths per centum on said sum of $625,546.30, levied and assessed said tax of one and two-tenths per centum twice, and said 2501 shares were thus doubly assessed and taxed for the same tax for the same fiscal year.

Said 2501 shares of the capital stock of said The National Bank of D. O. Mills & Co. are personal property and were owned and held as aforesaid, at and during all the times aforesaid, and are now owned and held by said The Bank of California, National Association, and by and under the laws of the United States of America cannot be taxed by the State of California and are not subject to taxation by and under the laws of the United States of America.

The tax assessed and levied by said State Board of Equalization on the shares of the capital stock of said The Bank of California, National Association, to wit, said tax or sum of $189,303.04, is, by the Constitution of the State of California, in lieu of all other taxes and licenses, state, county, municipal, upon the property of said The Bank of California, National Association, except county and municipal taxes and as otherwise provided in section 14, article

26 13 of the Constitution of the State of California; and hence said 2501 shares of said The National Bank of D. O. Mills & Co. were not and are not subject to said tax of one and two-tenths per centum for said fiscal year, and said tax of $7,506.56 assessed and levied on said 2501 shares, is unlawful and void.

Recapitulation.

Said tax of $7,506.56, assessed and levied as aforesaid upon said 2501 shares, was and is unlawful and void, because:

1st. Said tax of $7,506.56 is a second tax on the same property for the same tax for the same fiscal year.

2nd. Said tax of $7,506.56 is a tax assessed and levied on personal property owned by said The Bank of California, National Association, to wit, on said 2501 shares of the capital stock of said The National Bank of D. O. Mills & Co., contrary to the laws of the United States of America, and also contrary to the laws of the State of California.

3rd. Said tax of $189,303.04, assessed and levied on the shares of the capital stock of said The Bank of California, National Association, is in lieu of all other taxes, state, county and municipal, upon the property of said The Bank of California, National Association, and said 2501 shares were not, during any of the times aforesaid,

subject to taxation for said fiscal year, and during said times were not taxable or subject to said tax of one and two-tenths per
27 centum for said fiscal year, were not subject to said tax of $7,506.56, and were not subject to assessment for the purpose of taxing or imposing said tax of one and two-tenths per centum on said assessed valuation thereof, to wit, on said sum of $625,546.30, for said fiscal year.

4th. The assessing and levying of said tax of $7,506.56 on said 2,501 shares by said State Board of Equalization and the imposition of said tax of one and two-tenths per centum thereon for said fiscal year, lays or imposes upon said 2,501 shares and said assessed value thereof, to wit, said $625,546.30, a greater or heavier burden thereon than upon other moneyed capital in the hands of individual citizens of the State of California, and such taxation of said 2,501 shares is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of California.

EXHIBIT "C."

To Hon. John S. Chambers, Controller of the State of California, and Hon. Friend W. Richardson, Treasurer of the State of California.

SIRS: The sum of $731.50, being one-half of the taxes as-
28 sessed and levied for the fiscal year ending June 30th, 1916, to The Bank of California, National Association, on 1001 shares of the capital stock of the Mission Bank, which 1001 shares were, at 12 o'clock noon and prior thereto, on the first Mondoy in March, 1915, and ever since have been, owned and held by said The Bank of California, National Association, and which were thereafter assessed by the State Board of Equalization of the State of California and taxed to said The Bank of California, National Association, is herewith paid under protest upon the following grounds:

The Mission Bank is, and was at 12 o'clock noon on the first Monday in March, 1915, a corporation organized and existing under the laws of the State of California and doing a general banking business in the City and County of San Francisco, in the State of California.

The Bank of California, National Association, is and was at said time a corporation organized and existing under the "National Bank Act" of the United States of America and doing a general banking business in the City and County of San Francisco, in said state.

The authorized and issued capital stock of said association is and was at said time, 85,000 shares, of the par value of $100 each.

After the first Monday in March, 1915, the value of said 85,000 shares of the capital stock of The Bank of California, National Association, was assessed by said State Board of Equalization—
29 after deducting the value, as assessed for county taxes, of the real estate owned by said association at 12 o'clock noon on the first Monday in March, 1915, and taxed for county purposes—at the sum of $15,775,252.67.

Thereafter said State *of* Board of Equalization levied and assessed upon said 85,000 shares of the capital stock of said association, for the fiscal year ending June 30th, 1916, a tax of one and two-tenths per centum upon the said assessed value of said 85,000 shares, to wit, upon the sum of $15,775,252.67, which tax amounted to and is the sum of $189,303.04.

After the first Monday in March, 1915, the value of said 1001 shares of the capital stock of said The Mission Bank owned by said association, at 12 o'clock noon of the first Monday in March, 1915, was assessed by said State Board of Equalization at the sum of $121,916.52, and thereafter said State Board of Equalization levied and assessed upon said 1001 shares for the fiscal year ending June 30th, 1916, a tax of one and two-tenths per centum upon the said assessed value of said 1001 shares, to wit, on said sum of $121,916.52, which tax amounted to and is the sum of $1,463.

In assessing the value as aforesaid of the 85,000 shares of the capital stock of said association, said State Board of Equalization included in and made a part of said sum of $15,775,252.67,
30 the said assessed value of said 1001 shares of the capital stock of said The Mission Bank, to wit, said sum of $121,916.52.

Said State Board of Equalization, in levying and assessing for said fiscal year said tax of one and two-tenths per centum on said sum of $15,775,252.67, and also said tax of one and two-tenths pre centum on said sum of $121,916.52, levied and assessed said tax of one and two-tenths per centum twice, and said 1001 shares were thus doubly assessed and taxed for the same tax for the same fiscal year.

Said 1001 shares of the capital stock of said The Mission Bank are personal property and were owned as aforesaid at and during all the times aforesaid and now are owned by said The Bank of California, National Association, and by and under the laws of the United States of America cannot be taxed by the State of California, and are not subject to taxation, by and under the laws of the United States of America, by the said state.

The tax assessed and levied by said State Board of Equalization on the shares of the capital stock of said The Bank of California, to wit, said tax or sum of $189,303.04, is, by the Constitution of the State of California, in lieu of all other taxes and licenses, state, county and municipal, upon the property of said The Bank of California, National Association, except county and municipal taxes and as otherwise provided in section 14, article 13, of the Constitution of
31 the State of California; and hence said 1001 shares of said The Mission Bank were not and are not subject to said tax of one and two-tenths per centum for said fiscal year, and said tax of $1,463 assessed and levied on said 1001 shares, is unlawful and void.

Recapitulation.

Said tax of $1,463, and the whole thereof, assessed and levied as aforesaid upon said 1001 shares, was and is unlawful and void, because:

1st. Said tax of $1,463 is a second tax on the same property for the same tax for the same fiscal year.

2nd. Said tax of $1,463 is a tax assessed and levied on personal property owned by said The Bank of California, National Association, to wit, on said 1001 shares of the capital stock of said The Mission Bank, contrary to the laws of the United States and also contrary to the laws of the State of California.

3rd. Said tax of $189,303.04, assessed and levied on the shares of the capital stock of said The Bank of California, National Association, is in lieu of all other taxes, state, county and municipal, upon the property of said The Bank of California, National Association, and said 1001 shares were not, during any of the times aforesaid, subject to taxation for said fiscal year, and during said times were not taxable or subject to said tax of one and two-tenths per
32 centum for said fiscal year, were not subject to said tax of $1,463, and were not subject to assessment for the purpose of taxing or imposing said tax of one and two-tenths per centum on said assessed valuation thereof, to wit, on said sum of $121,916.52, for said fiscal year.

4th. The assessing and levying of said tax of $1,463 on said 1001 shares by said State Board of Equalization and the imposition of said tax of one and two-tenths per centum thereon for said fiscal year, lays or imposes upon said 1001 shares and said assessed value thereof, to wit, said $121,916.52, a greater or heavier burden thereon than upon other money capital in the hands of individual citizens of the State of California, and such taxation of said 1001 shares is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of California.

(Endorsed:) Filed Apr. 21, 1917. H. I. Mulcrevy, Clerk, by H. Brunner, Deputy Clerk.

[Title of Court and Cause.]

Demurrer to Amended Complaint.

Now comes the above named defendant and demurs to plaintiff's amended complaint on file herein, and for ground of demurrer shows:

33 I.

That the complaint does not state facts sufficient to constitute a cause of action.

Wherefore defendant prays that plaintiff take nothing by its action and that defendant be hence dismissed with his costs.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant.

(Endorsed:) Due service of the within demurrer admitted this 1st day of May, 1917. Pillsbury, Madison & Sutro, Attorneys for Plaintiff.

Filed May 1, 1917. H. I. Mulcrevy, Clerk, by H. Brunner, Deputy Clerk.

[Title of Court and Cause.]

Minute Order Sustaining Demurrer to Amended Complaint.

Friday, May 11, 1917.

Court met, present Honorable J. M. Seawell, judge, and officers of the court

In this action defendant's demurrer to amended complaint on file herein came on regularly this day for hearing. There-
34 upon said demurrer was submitted to the court for decision. Whereupon it is ordered that said demurrer be and the same is hereby sustained; further ordered that judgment be and the same is hereby entered for defendant.

[Entered in minutes of department No. 1, volume 117, page 74.]

[Title of Court and Cause.]

Judgment.

In Open Court.

Friday, May 11, 1917.

In this action defendant's demurrer to amended complaint on file herein came on regularly this day for hearing. Thereupon said demurrer was submitted to the court for decision. Whereupon it is ordered that said demurrer be and the same is hereby sustained, further ordered that judgment be and the same is hereby entered in favor of defendant.

Wherefore, by reason of the law and the premises aforesaid.

It is ordered, adjudged and decreed that The Bank of California, National Association, a corporation, plaintiff, do take nothing by this said action as against Friend Wm. Richardson, as Treasurer of the State of California, defendant, but that judgment be and
35 the same is hereby entered herein in favor of said defendant and against said plaintiff for said defendant's costs and disbursements incurred in this action, amounting to the sum of $—.

(Endorsed:) Recorded May 14, 1917, 2:55 o'clock P. M., volume 102, page 472. H. I. Mulcrevy, Clerk, by H. S. Jones, Deputy Clerk.

D. 5, 15, '17.

[Title of Court and Cause.]

Clerk's Certificate to Judgment Roll.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, H. I. Mulcrevy, county clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled cause, and recorded in judgment book 102 of said court, at page 472. And I further certify that the forego ng papers hereto annexed constitute the judgment roll in said cause.

Witness my hand and seal of said Superior Court this 14th day of May, A. D. 1917.

[SEAL.]

H. I. MULCREVY, *Clerk*,
By S. I. HUGHES, *Deputy Clerk*.

36 (Endorsed:) Filed May 15, 1917. H. I. Mulcrevy, Clerk, by S. I. Hughes, Deputy Clerk.

Recorded judgment book 102, page 472.

[Title of Court and Cause.]

Notice of Appeal.

To the Clerk of the Above Named Court and to All Persons Interested in the Above Entitled Action:

You and each of you will please take notice that plaintiff above named does hereby appeal to the Supreme Court of the State of California from the whole of the judgment of the above named court, rendered in favor of defendant in said action and against said plaintiff; which said judgment was entered on May 14, 1917, in book 102 of judgments at page 472, in the records of the above named court.

Dated this 16th day of May, 1917.

PILLSBURY, MADISON & SUTRO,
Attorneys for Plaintiff.

(Endorsed:) Filed May 16, 1917. H. I. Mulcrevy, Clerk, by H. Brunner, Deputy Clerk.

37 *Stipulation to Transcript.*

It is hereby stipulated that the foregoing transcript on appeal is correct; that it contains full, true and correct copies of all the papers therein set forth now on file in the office of the county clerk of

the City and County of San Francisco, State of California; that the minute orders therein contained are full, true and correct copies thereof as made and entered in the minutes of the Super or Court; that the said foregoing papers shall constitute the transcript on appeal in this cause and that the appeal may be heard and determined thereon.

Dated, May 29, 1917.

U. S. WEBB, *Attorney General;*

RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Respondent.

PILLSBURY, MADISON & SUTRO,
Attorneys for Appellant.

38 In the Supreme Court of the State of California. In Bank.

S. F. No. 8381.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff and Appellant,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

By the COURT:

It is stipulated in this case that all of the questions involved in the appeal are identical with those involved and passed upon by this court in the case of the Bank of California v. Roberts, as Treasurer, reported in 173 Cal. commencing at page 398. On the authority of that case the judgment must be affirmed.

The judgment is affirmed.

39 [Endorsed:] No. 8381. Supreme Court, State of California.

The Bank of California, National Association (a Corporation), Plaintiff and Appellant, vs. Friend Wm. Richardson, as Treasurer, etc., Defendant and Respondent.

Judgment of California Supreme Court.

Filed Jun- 18, 1917. B. Grant Taylor, Clerk, by Erb, Deputy.

40 In the Supreme Court of the State of California.

S. F. No. 8381.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff and Appellant,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Appeal from the Superior Court of the City and County of San Francisco.

Opinion of the California Supreme Court in the Bank of California, N. A., v. Roberts, as Treasurer, etc., 173 Cal., 398, Referred to in Judgment of Said Court in Above Case.

Geo. A. Sturtevant, Judge.

For Appellant: U. S. Webb, Attorney General; Raymond Benjamin, Chief Deputy Attorney General.

For Respondent: Pillsbury, Madison & Sutro, A. E. Roth, A. D. Plaw.

Plaintiff brought this action to recover taxes paid under protest, and recovered judgment for $7,479.68. The defendant appeals from the judgment, which was rendered on the pleadings.

The plaintiff is a banking corporation organized under the National Banking Act of the United States. It has a capital stock of 85,000 shares, of the par value of $100. each. In the year 1911, the state board of equalization assessed these 85,000 shares at the sum of $15,531,588. and assessed and levied a tax of 1 per centum thereon.

During the year 1911, the plaintiff was the owner of 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., likewise a corporation organized under said National Bank Act.

41 It was also the owner of 1049 shares of the capital stock of The Mission Bank, a banking corporation organized under the laws of the State of California. The board of equalization, in assessing the 85,000 shares of the capital stock of the plaintiff, included in its valuation the value of the 2501 shares of stock in The National Bank of D. O. Mills & Co. and the value of the 1049 shares of stock in The Mission Bank.

The shares of stock of The National Bank of D. O. Mills & Co. and of The Mission Bank were assessed in like manner by the state board of equalization, and the tax was levied upon all of the shares of these banks, including those owned by the plaintiff.

The plaintiff claimed that this course of procedure resulted in a double taxation of the shares of stock in the two banks owned by it, and applied to the board of equalization to exclude from the assessment of its shares the value of the said shares of the two other banks.

This application having been denied, the plaintiff paid its tax under protest. The tax on the 2501 shares of the stock of The National Bank of D. O. Mills & Co. amounted to $6,278.67. The tax upon the 1049 shares of The Mission Bank came to $1,201.01. These sums having been paid under protest, the plaintiff brought this action to recover them.

The taxes here involved were levied in accordance with the provisions added to the constitution by the amendments adopted in November, 1910. (Art. XIII, Sec. 14.) As we have heretofore said, these amendments "worked a radical change in the system of taxation in this state. Broadly speaking, the purpose of the change, as is well known, was to divide the subjects of state and local taxation by imposing upon persons and corporations engaged in certain callings—those of public service corporations, insurance companies, banks and trust companies—the obligation to pay certain
42 taxes to be applied exclusively to state purposes. At the same time, the persons engaged and the property employed in these callings were, to a greater or less degree, to be free from the burden of local taxation. * * * Under the old system the property and franchises of the corporations above referred to were taxed for both state and local purposes. The amendment creates a new mode of taxing such property and franchises, and appropriates the revenue so raised to state purposes solely." (City and County of San Francisco v. Pacific Tel. & Telegraph Co., 166 Cal. 244, 247.) Subdivision (*c*) of section 14, thus added to the constitution, provides in detail for the method of assessing and taxing banks. It is provided that the shares of the capital stock of all banks incorporated under the laws of any state or of the United States and located in this state shall be assessed and taxed to the owners or holders thereof by the state board of equalization, and that there shall be levied and assessed upon such shares an annual tax, payable to the state, of one per centum upon the value thereof. The value of each share of stock is to be taken to be the amount paid in thereon, together with its pro rata of the accumulated surplus and undivided profits. In reaching this result, deduction is to be made of the value of real estate owned by the bank and taxed for county purposes. It is provided that the banks shall pay the tax to the state on behalf of the stockholders and shall have a lien upon the shares and any dividends to secure the amount so paid.

This subdivision contains a detailed and comprehensive scheme for the valuation of the shares of stock of banks. It declares that the value shall be taken to be the amount paid in on the
43 stock, together with the pro rata of the accumulated surplus and undivided profits. Provision is made for the deduction of one item of property, to wit: real estate taxed for county purposes. No other deduction is directed to be made, and it seems clear, under the most familiar rules of interpretation, that none other was contemplated. So far as the face of the constitutional provision goes, the value of the shares is to be computed by including, in addition to the amount paid in on the stock, every item of property embraced within accumulated surplus and undivided profits, with the single

exception of real estate taxed for county purposes. The board of equalization acted, therefore, in strict compliance with the constitutional method when it fixed the value of the shares of stock in the plaintiff bank by taking the amount paid in, together with the pro rata of the accumulated surplus and undivided profits, subject to a deduction of the value of the designated real estate alone. The shares of stock in other corporations, whether engaged in banking or other business, were necessarily included in determining the amount on which this pro rata was to be reckoned. Similarly, in fixing the value of the shares of stock in The National Bank of D. O. Mills & Co. and in The Mission Bank, the board was required to follow the same course. Its ascertainment of the value of the shares of stock in those banks, by whomever owned or held, was reached by adding to the amount paid in the pro rata of the accumulated surplus and undivided profits of the respective banks after making the deduction of real estate.

The respondent claims that, by a long line of decisions beginning with Burke v. Badlam (57 Cal. 594), this court has established the doctrine that the sum total of the value of the shares of stock
44 in a corporation is the equivalent of the value of all of the property of every kind, including franchises, owned by the corporation. (Spring Valley Water Works v. Schottler, 62 Cal. 69, 115 et seq.; City and County of San Francisco v. Anderson, 103 Cal. 69; People v. National Bank of D. O. Mills & Co., 123 Cal. 53, 60; Bank of California v. San Francisco, 142 Cal. 276; Crocker v. Scott, 149 Cal. 575.) It was upon this theory that the court held that section 3608 of the Political Code, prohibiting any assessment of the shares of stock of state corporations, was not in conflict with section 1, article XIII, of the constitution which declared that all property should be taxed in proportion to its value, and defined the word "property" as including, among other things, "stocks." (Burke v. Badlam, supra.) The cases have, for their foundation, the proposition that an assessment and taxation of every item and element of property owned by the corporation and giving value to its stock is, in effect, an assessment and taxation of the stock itself. And, basing its argument upon this proposition, the plaintiff bank contends that when the shares of stock issued by it are assessed and taxed upon a valuation which includes the value of shares of stock owned by it in other banks, and those shares are again assessed upon a separate ascertainment of their value, the state is undertaking to tax the same property twice. On the other hand, the appellant argues that there is not, in reality, any question of double taxation here. In assessing the shares of stock in the plaintiff, a tax is imposed upon the owners and holders of those shares. The plaintiff pays the tax only on behalf of the holders. In assessing the shares of stock in The National Bank of D. O. Mills & Co. and The Mission Bank, the tax is imposed not upon those banks, but upon the holders of the shares, whoever they may be. The plaintiff as one of
45 such holders is, so the appellant contends, no more entitled to exemption from the tax than is any other shareholder. The Supreme Court of the United States has consistently held that

a tax upon the shares is not the equivalent of a tax upon the capital of the bank (see Owensboro N. B. v. Owensboro, 173 U. S. 677, and cas. cit.), and that the state may properly impose a tax upon the full value of the shares of stock in a national bank, regardless of the fact that the property of the bank, which gives those shares their value, may be in part composed of bonds of the United States or other property exempt from taxation. (Van Allen v. Assessors, 3 Wall. 573; People v. Tax Comrs., 4 Wall. 244.)

We need not stop to inquire whether these decisions proceed upon a theory in conflict with the views announced by this court in Burke v. Badlam and subsequent decisions to like effect. Let it be assumed that the assessment here complained of did result in double taxation. In the absence of express constitutional provision, there is, however, no necessary or inherent objection to taxing the same property twice to different persons "so long at least, as there is some kind of estate or right, in both persons taxed, to the taxed property." (Gray on Limitation of Taxing Power, secs. 1361, 1363; Cooley on Taxation, 3rd ed., p. 389 et seq.) Such taxation does not contravene any provision of the federal constitution. "It is no doubt within the power of a state, when not restrained by constitutional limitations, to assess taxes upon them" (i. e., property of the corporation and shares of stock in the hands of the individual stockholders), "in a way to subject the corporation or the stockholders to double taxation." (Tennessee v. Whitworth, 117 U. S. 129, 136-7.)

Does the constitution of California prohibit such double
46 taxation as may be involved in the assessment here complained of? No doubt our constitution, as it stood prior to the amendments of 1910, did contain such prohibition. Section 1 of article XIII, as it originally read, provided that "All property in the state, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law." This is the language which was held, in the cases above cited, to forbid double taxation. "All property" is not taxed in proportion to its value if some of it is taxed once and some of it more than once upon the ascertained value. (Burke v. Badlam, supra.) But when the new system of taxing certain corporations for state purposes was embodied in the constitution, section 1 was also amended. That section was made to read as follows: "All property in the state *except as otherwise in this constitution provided,* not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, *or as hereinafter provided.*" The change consisted in the addition of the italicized words. Here is an express declaration that the general rule requiring property to be taxed in proportion to its value shall be subject to the qualification that such proportionate method of taxation shall not apply where the constitution makes other provision. It has, as we have seen, made other provision for the assessment of bank property. The respondent claims that the words "except as otherwise in this constitution provided" qualify merely the subject of the sentence, to wit: "all property in the state." In other words, the contention is that this qualifying clause was meant to cover only the exemptions specifically

provided for in section 1 and subsequent sections of article
47 XIII. This is a strained interpretation of the language.

The amendments to section 1 and to section 14 were proposed and adopted at the same time, and there can be no doubt that the changes formed parts of a single comprehensive scheme. The plan of section 14 is in various respects inconsistent with the idea that the property therein described shall be assessed in proportion to its value. The taxes levied, while described as taxes upon the property of corporations, are not based upon any mode of ascertaining either the proportionate or the absolute value of such property. Thus, in subdivision *a*, railroad, telegraph, telephone, gas or electric and certain other companies are subjected to a tax of a certain percentage of their gross receipts from operations within this state. Subdivision *b* imposes upon insurance companies a tax of one and one-half per cent upon the amount of the gross premiums received. Such taxes cannot upon any fair construction be said to comply with a requirement that all property shall be taxed in proportion to its value. Surely it was not believed, when section 14 was adopted, that the method of taxation therein provided for should be limited or controlled by any general provision such as that theretofore contained in section 1. The amendment of section 1 was designed to avoid any possible conflict with section 14. Even if, however, there should be any opposition between the general terms of section 1 and the provisions of section 14, the latter, as the more specific and particular enactment, would prevail.

The respondent makes a further point. Since national banks constitute an agency of the United States, created for the carrying out of governmental purposes, property of such banks and shares of stock in the same cannot be taxed by a state except in so far as such taxation is permitted by act of congress. The requisite per-
48 mission is granted by section 5219 of the Revised Statutes. That section authorizes the several states to include all the shares of national banks in the valuation and assessment of personal property of the owner or holder of such shares, subject to the restrictions (1) that the tax shall not be at a greater rate than is assessed upon other moneyed capital, and (2) that shares owned by nonresidents of the state shall be taxed in the city or town where the bank is located. The claim is made that this statute does not authorize the assessment of the personal property of national banks to the banks, and that the state is not, therefore, authorized to assess to the plaintiff, through The Mission Bank, the plaintiff's shares in that bank. In Bank of Redemption v. Boston, 125 U. S. 60, it was decided by the Supreme Court of the United States that section 5219 of the Revised Statutes does not prevent the taxation of the shares of a national bank in the hands of another national bank. No different rule could be applied to the taxation of shares in a state bank owned by a national bank without violating the provision of section 5219 requiring "other moneyed capital" to be assessed at a rate equal to that imposed upon shares in national banks. If the section authorizes the taxation of shares owned by a national bank in another

national bank, it must necessarily contemplate a like taxation of shares in state banks similarly owned.

The judgment is reversed.

SLOSS, *J.*

We concur:

SHAW, *J.*
HENSHAW, *J.*
MELVIN, *J.*
LORIGAN, *J.*
ANGELLOTTI, *C. J.*
LAWLOR, *J.*

49 [Endorsed:] No. 8381. Supreme Court, State of California.

The Bank of California, National Association (a corporation), Plaintiff and Appellant, vs. Friend Wm. Richardson, as Treasurer, etc., Defendant and Respondent.

Opinion of the California Supreme Court in The Bank of California, N. A., v. Roberts, etc.

Filed Sept. 21, 1916. B. Grant Taylor, Clerk, by Ramage, Deputy.

50 In the Supreme Court of the State of California.

S. F. No. 8381.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff and Appellant,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Petition for Writ of Error.

Comes now The Bank of California, National Association, the above named plaintiff and appellant, and petitioner herein, and shows to this Honorable Court:

That, heretofore and on the 18th day of June, 1917, a judgment was entered, in the above cause, by the above named Supreme Court of the State of California, against your petitioner, the above named plaintiff and appellant, and in favor of the above named defendant and respondent, affirming the judgment of the Superior Court of the State of California, in and for the City and County of San Francisco, as will appear by the record and proceedings in said cause, in which said judgment of the said Supreme Court of the State of California, in said cause, certain errors were committed to the prejudice of your petitioner, all of which will, in more detail, appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff and appellant, the petitioner herein, prays that a Writ of Error issue in this behalf, returnable in
51 the Supreme Court of the United States, for the correction of the errors complained of; that all further proceedings in the above entitled cause, in this Court, and in all inferior Courts of the State of California, be suspended, stayed and superseded until the determination of said Writ of Error by said Supreme Court of the United States; and that a duly authenticated transcript of the record and proceedings in this cause may be sent to the Supreme Court of the United States.

Dated this 19th day of July, 1917.

PILLSBURY, MADISON & SUTRO,
Attorneys for Petitioner.

STATE OF CALIFORNIA,
Supreme Court, ss:

Let the Writ of Error, above prayed for, issue upon the execution of a bond by The Bank of California, National Association, to Friend Wm. Richardson, as Treasurer of the State of California, in the sum of $1,000; said bond, when approved, to act as a supersedeas.

Dated this 19th day of July, 1917.

H. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

52 [Endorsed:] Original. No. S. F. 8381. Supreme Court, State of California.

The Bank of California, National Association (a corporation), Plaintiff and Respondent, vs. Friend Wm. Richardson, as Treasurer, etc., Defendant and Respondent.

Petition for Writ of Error.

Filed Jul- 19, 1917. B. Grant Taylor, Clerk, by Erb, Deputy.

Pillsbury, Madison & Sutro, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

53 Copy.

In the Supreme Court of the State of California.

S. F. No. 8381.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff and Appellant,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant and Respondent.

Assignment of Errors on Writ of Error to the Supreme Court of the United States.

Now comes The Bank of California, National Association, plaintiff and appellant in the above cause, and plaintiff in error to the

Supreme Court of the United States, by its attorneys, and files herewith its petition for Writ of Error, and avers and shows:

That, in the records and proceedings in the above entitled cause, the Supreme Court of the State of California erred, to the grievous injury and wrong of plaintiff in error, and to the prejudice and against the rights of plaintiff in error and, for the purpose of having said proceedings in the above entitled cause reviewed in the Supreme Court of the United States, plaintiff in error presents the following assignment of errors and prayer for reversal of the decision in the above entitled cause in this Court, by the Supreme Court of the United States:

54 First. The Supreme Court of the State of California erred in affirming the judgment in favor of the defendant in said cause, in the Superior Court of the State of California in and for the City and County of San Francisco; and in refusing to reverse said judgment.

Second. The Supreme Court of the State of California erred in holding and deciding that the law of the State of California, in requiring and permitting the taxation to plaintiff in error, by said State, of the shares of the capital stock of The Mission Bank, a California corporation, owned by plaintiff in error, was not in contravention of Section 5219 of the Revised Statutes of the United States.

Third. The Supreme Court of the State of California erred in holding and deciding that Section 5219 of the Revised Statutes of the United States confers the power upon the State of California to tax to plaintiff in error the said shares of The Mission Bank, owned by plaintiff in error.

Fourth. The Supreme Court of the State of California erred in holding and deciding that, because Section 5219 of the Revised Statutes of the United States authorizes the State of California to tax to plaintiff in error the shares of the capital stock of The National Bank of D. O. Mills & Co., owned by plaintiff in error, it follows that said Section 5219 authorizes the taxation to plaintiff in error of the shares of the capital stock of The Mission Bank, owned by plaintiff in error.

Fifth. The Supreme Court of the State of California erred in not holding and deciding that, as the shares of The Mission Bank, owned by plaintiff in error, cannot be taxed to it by the State, the attempted double taxation under the State law of the value

55 of the shares of the capital stock in The National Bank of D. O. Mills & Co., owned by plaintiff in error, is an unlawful discrimination against the latter shares and, consequently, void under Section 5219 of the Revised Statutes.

Sixth. The Supreme Court of the State of California, in upholding the State law providing for the taxation to plaintiff in error of the shares of The Mission Bank, owned by it, failed to give effect to the last clause of Section 8 of Article I of the Constitution of the United States.

Seventh. The Supreme Court of the State of California, in upholding the State law providing for the taxation to plaintiff in error,

and to its stockholders, of the value of the shares of The National Bank of D. O. Mills & Co., owned by it, failed to give effect to the last clause of Section 8 of Article I of the Constitution of the United States.

And by reason of the foregoing errors and holdings, plaintiff in error prays that the said judgment of the Supreme Court of the State of California may be reversed by the Supreme Court of the United States, and that a mandate be issued directing said Supreme Court of the State of California to enter its judgment reversing the judgment, in said cause, of the Superior Court of the State of California, in and for the City and County of San Francisco; and also, that a decree be entered in favor of the plaintiff in error for its costs and disbursements; and that it may be restored to all things which it has lost by reason of said judgment of the Supreme Court of the State of California.

Dated this 19th day of July, 1917.

PILLSBURY, MADISON & SUTRO,
Attorneys for Appellant and Plaintiff in Error.

56 [Endorsed:] Copy. No. S. F. 8381. Supreme Court, State of California.

The Bank of California, National Association (a Corporation), Plaintiff and Appellant, vs. Friend Wm. Richardson, as Treasurer, etc., Defendant and Respondent.

Assignment of Errors on Writ of Error to the Supreme Court of the United States.

Filed July 19, 1917. B. Grant Taylor, Clerk, by I. Erb, Deputy.

Pillsbury, Madison & Sutro, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

57 Copy.

In the Supreme Court of the United States.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff in Error,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Bond on Writ of Error.

Know All Men By These Presents:

That the Bank of California, National Association, a national banking association, organized and existing under and by virtue of the National Bank Act of the United States, as principal, and National Surety Company, a corporation duly organized and existing under the laws of the State of New Yerk, as surety, are held and firmly bound unto the above named Friend Wm. Richardson, as Treasurer of the State of California, in the sum of $1,000, to which payment

well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 19th day of July, 1917.

58 Whereas the above named plaintiff in error seeks to prosecute its Writ of Error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the said Supreme Court of the State of California:

Now, Therefore, the condition of this obligation is such that, if the above named plaintiff in error shall prosecute such Writ of Error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION,
By C. K. McINTOSH, *Vice-President.* [SEAL.]
NATIONAL SURETY COMPANY,
By FRANK L. GILBERT.

The above bond is approved this 19th day of July, 1917.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this Nineteenth day of July in the year one thousand nine hundred and Seventeen, before me Julius Colmann, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Frank L. Gilbert known to me to be the person whose name is subscribed to the within instrument as the Attorney in fact of the National Surety Company, the corporation described in the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and the said Frank L. Gilbert acknowledged to me that he subscribed the name of the National Surety Company thereto as principal and his own name as Attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[SEAL.] JULIUS COLMANN,
Notary Public in and for the City and County of San Francisco, State of California.

59 [Endorsed:] Copy. S. F. 8381. In the Supreme Court of the United States.

The Bank of California, National Association (a corporation), Plaintiff in Error, vs. Friend Wm. Richardson, as Treasurer, etc., Defendant in Error.

Bond on Writ of Error.

Filed Jul- 19, 1917. B. Grant Taylor, Clerk Supreme Court. Erb.

Pillsbury, Madison & Sutro, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

60 In the Supreme Court of the United States.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff in Error,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said action between The Bank of California, National Association, plaintiff and plaintiff in error, and Friend Wm. Richardson, as Treasurer of the State of California, defendant and defendant in error, wherein was drawn into question the validity of a
61 statute of, or an authority exercised under, the State of California, on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of their validity, and was against the title, right, privilege or immunity, especially set up or claimed by said plaintiff in error under the Constitution of the United States and a statute thereof, a manifest error hath happened to the great damage of the said The Bank of California, National Association, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you may have the same at Washington, D. C., on the 17th day of September, next, in said Supreme Court, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further

to be done therein, to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Jus-
62 tice of the United States, this 19th day of July, 1917.

[Seal of the U. S. District Court, Northern Dist. of California.]

WALTER B. MALING,
Clerk of the District Court of the United States in and for the Northern District of California,
By J. A. SCHAERTZER,
Deputy Clerk.

Allowed this 19th day of July, 1917.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

63 [Endorsed:] Original. S. F. 8381. In the Supreme Court of the United States.
The Bank of California, National Association (a corporation), Plaintiff in Error, vs. Friend Wm. Richardson, as Treasurer, etc., Defendant in Error.
Writ of Error.
Filed Jul. 19, 1917. B. Grant Taylor, Clerk, by Erb, Deputy.
Pillsbury, Madison & Sutro, Attorneys at law, Standard Oil Building, San Francisco, Cal.

64 In the Supreme Court of the United States.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff in Error,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California, Defendant in Error.

Citation on Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Friend Wm. Richardson, as Treasurer of the State of California, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within sixty (60) days from the date hereof, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of California, wherein The Bank of California, National Association, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against

the said plaintiff in error, as in said Writ of Error mentioned, should not be corrected and why speedy justice should not
65 be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of California, this 19th day of July, 1917.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

Attest:

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California,
By I. ERB, *Deputy.*

The undersigned, attorneys of record for the defendant in error in the above entitled cause, hereby acknowledge due service of the above citation this 19th day of July, 1917.

U. S. WEBB,
Attorney General for the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General for the State of California,
Attorneys for Defendant in Error.

66 [Endorsed:] Original. S. F. 8381. In the Supreme Court of the United States.

The Bank of California, National Association (a Corporation), Plaintiff in Error, vs. Friend Wm. Richardson, as Treasurer of the State of California, Defendant in Error.

Citation on Writ of Error.

Filed Jul- 19, 1917. B. Grant Taylor, Clerk, by Erb, Deputy.

Pillsbury, Madison & Sutro, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

67 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing transcript contains a full, true and complete copy of the record of the within entitled action, filed with our said Court as the Transcript on Appeal from the judgment of the Superior Court of the State of California, in and for the City and County of San Francisco, from which said appeal was taken and upon which said transcript said appeal was heard; and that the foregoing transcript also contains a full, true and complete copy of the judgment of our Supreme Court, entered on said appeal on the 18th day of June, 1917.

I further certify that the foregoing transcript likewise contains a full, true and complete copy of the opinion of our Supreme Court in the case of The Bank of California, N. A., v. Roberts, as Treasurer, etc., and which is referred to by our Supreme Court in said judgment.

I further certify that the Assignment of Errors and Prayer for Reversal, Bond on Writ of Error and its Approval, all of which are attached to the above and foregoing, have been by me compared with the originals thereof, and that they are true and correct copies of such originals, as the same appear of record and on file in my office and in my custody.

I further certify that the Petition for Writ of Error and Allowance thereof, Writ of Error and allowance thereof, and Citation with service endorsed thereon, all of which are attached to the above
68 and foregoing, are the original Petition for Writ of Error, Writ of Error and Citation, lodged with and filed in my office; and that the foregoing transcript is a true and correct copy of the papers and pleadings filed and of the proceedings had in the above entitled cause in our said Court, as the same appear of record and on file in my office.

I further certify that, by written stipulation filed with me, the respective counsel of record for the within named Plaintiff in Error and the within named Defendant in Error agreed that the portions of the record, hereinabove set forth, should constitute the transcript of the record on Writ of Error upon which the same shall be heard.

I further certify that the cost of the foregoing return to Writ of Error is $12.50 and that the said amount has been heretofore paid to me by Messrs. Pillsbury, Madison & Sutro, Attorneys for the Plaintiff in Error.

In Witness Whereof, I have hereunto set my hand and the seal of the Supreme Court of the State of California at my office in the City and County of San Francisco, in said State, this 22d day of August, 1917.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California,
By I. ERB, *Deputy Clerk.*

UNITED STATES OF AMERICA,
Supreme Court of the State of California, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified
69 transcript of a true copy of the record and of the Assignment of Errors, and all proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court of the State of California, in the City

and County of San Francisco, in said State, this 22d day of August, 1917.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California,
By I. ERB, *Deputy Clerk.*

[Endorsed:] In the Supreme Court of the United States.
The Bank of California, National Association (a Corporation), Plaintiff in Error, vs. Friend Wm. Richardson, as Treasurer of the State of California, Defendant in Error.
Cierk's Return and Transcript on Writ of Error.

Endorsed on cover: File No. 26,127. California Supreme Court. Term No. 660. The Bank of California, National Association, plaintiff in error, vs. Friend Wm. Richardson, as Treasurer of the State of California. Filed September 4th, 1917. File No. 26,127.

Office Supreme Court, U. S.
F[illegible] D
APR 23 1918
JAMES D. MAHER,
CLERK.

No. [redacted] 262

In the Supreme Court
OF THE
United States

OCTOBER TERM 1917

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION,
Plaintiff in Error,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California,
Defendant in Error.

MOTION TO ADVANCE HEARING OF CAUSE.

E. S. PILLSBURY,
F. D. MADISON,
ALFRED SUTRO,
OSCAR SUTRO,
Attorneys for Plaintiff in Error.

In the Supreme Court
OF THE
United States

OCTOBER TERM 1917

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, *Plaintiff in Error,* vs. FRIEND WM. RICHARDSON, as Treasurer of the State of California, *Defendant in Error.*	No. 660

MOTION TO ADVANCE HEARING OF CAUSE.

To the Honorable Edward Douglass White, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The Bank of California, National Association, plaintiff in error in the above entitled cause, hereby respectfully moves the Honorable, the Supreme Court of the United States, to make its order advancing the hearing of said cause, so that the same may be heard and determined before the expiration of the present year.

Said motion is based upon the grounds hereinafter set forth; and is made upon the transcript now on file, and upon the following agreed statement:

STATEMENT OF THE CASE AND OF THE MATTER INVOLVED.

At the end hereof is a stipulation by the parties that the facts, hereinafter stated, are true and are disclosed by the transcript, and that this motion may be determined thereon.

The action was brought in the California Superior Court, by The Bank of California, National Association, a national banking association, plaintiff in error here, against Friend Wm. Richardson, as Treasurer of the State of California, defendant in error here, to recover from the defendant in error, as such Treasurer, certain taxes levied against plaintiff in error by the State of California and paid by it to the State, under protest.

In its amended complaint, plaintiff in error averred the following facts:

The Bank of California, National Association, a national banking association, having its principal place of business at San Francisco, California, and having an authorized and subscribed capital stock of 85,000 shares, of the par value of $100. each, was the owner of 1001 shares of the capital stock of The Mission Bank, a California State banking corporation, and of 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., a national banking association, both doing business in the State of California. The State, for the fiscal year 1915, taxed to plaintiff in error the value of the shares, issued by it, under its agreement with the State that those shares, instead of being taxed to its shareholders as required by Sec-

tion 5219 of the Revised Statutes of the United States, should be taxed directly to it. In fixing the value of the shares, issued by plaintiff in error, for the purpose of taxation, the State took into consideration the value of the shares of The Mission Bank and of The National Bank of D. O. Mills & Co., owned by plaintiff in error. The State, for the same fiscal year, also taxed the value of these shares of The Mission Bank, owned by plaintiff in error, to it as a shareholder of The Mission Bank; and also taxed the value of the shares of The National Bank of D. O. Mills & Co., owned by plaintiff in error, to it, as a shareholder of The National Bank of D. O. Mills & Co. These taxes were all paid by plaintiff in error to the State, under protest.

Plaintiff in error, in its amended complaint, prayed for judgment against the defendant in error for the sum of $1463., the amount of the tax, levied against it and paid by it as a shareholder of The Mission Bank; and for the sum of $7506.56, the amount of the tax, levied against it and paid by it as a shareholder of The National Bank of D. O. Mills & Co.

The State statute permitted the payment of these taxes under protest and provided that, after such taxes had been so paid, suit for recovery thereof might be maintained against the State Treasurer.

Defendant in error, in the trial court, demurred to the amended complaint of plaintiff in error for want of facts. This demurrer was sustained and, plaintiff in error declining to amend, judgment went for the defendant in error. Upon appeal by plaintiff in error to the Supreme Court of the State of California, the

judgment was affirmed. Thereafter a writ of error from this court was directed to the California Supreme Court; and the case is now here upon return to that writ.

In the amended complaint of plaintiff in error, it is specially set up and claimed that the constitution and laws of the State of California, under the authority of which the taxes complained of were levied, are, in so far as they require the taxation complained of, in contravention of those provisions of the Federal Constitution and of Section 5219 of the Revised Statutes of the United States, which forbid any State to tax personal property to a national banking association, or to tax the shares of a national banking association at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State.

In its opinion, the Supreme Court of the State of California held against the claim of unconstitutionality, asserted by plaintiff in error, and affirmed the judgment.

The official term of the defendant in error, Friend Wm. Richardson, as Treasurer of the State of California, will expire on January 5, 1919.

THE OBJECT OF, AND REASON FOR, THIS APPLICATION.

In its recent decision in *Pullman Co. v. Knott*, 243 U. S. 447, this court, after reviewing the earlier cases upon the subject, decided that a suit to enjoin the State Comptroller of the State of Florida from levying and assessing a tax under a law of that State, claimed to

be unconstitutional, abated in this court when the term of his office expired. This conclusion was based upon the ground that, upon the expiration of the term of office of the Comptroller, there was left no party defendant in error to stand in judgment; and the writ of error was dismissed.

In the *Knott* case, it was suggested by the plaintiff in error that a dismissal of the writ would involve great hardship and

> "That official terms will expire so that cases of this sort cannot be reviewed at all in this court" (p. 451).

In answer to this suggestion, it was pointed out by this court, that although the record had been filed on October 8, 1915, more than a year before the motion to dismiss was made, it did

> "not appear that any attempt was made to advance the case in view of the expiration of Knott's term of office as Comptroller in January, 1917" (p. 451).

Because of this intimation by this court that, where a State officer is defendant in error, a motion to advance will be entertained, in order that jurisdiction over the defendant in error may not be lost by the expiration of his term of office, and because the official term of the defendant in error in the case at bar will expire on January 5, 1919, this motion is made; and it is respectfully submitted that it should be granted.

E. S. Pillsbury,
F. D. Madison,
Alfred Sutro,
Oscar Sutro,
Attorneys for Plaintiff in Error.

STIPULATION AS TO THE FOREGOING STATEMENT OF THE CASE AND OF THE MATTER INVOLVED ON THIS MOTION.

It is hereby stipulated and agreed, by and between the parties to the within entitled cause, that the foregoing "Statement of the Case and of the Matters Involved" is true and correct and is supported by the record filed on the writ of error herein; and that the within motion to advance the hearing of this cause may be presented to and determined by the Court upon said statement.

Dated this 9th day of April, 1918.

E. S. PILLSBURY,
F. D. MADISON,
ALFRED SUTRO,
OSCAR SUTRO,
Attorneys for Plaintiff in Error.

U. S. WEBB,
Attorney General of the State of California,
RAYMOND BENJAMIN,
Chief Deputy Attorney General
of the State of California,
Attorneys for Defendant in Error.

NOTICE OF MOTION TO ADVANCE HEARING OF CAUSE.

To Friend Wm. Richardson, as Treasurer of the State of California, the above named Defendant in Error, and to his Attorneys, the Honorable U. S. Webb, Attorney General of the State of California, and Raymond Benjamin, Chief Deputy Attorney General of the State of California:

You and each of you will please take notice that on Monday, the 13th day of May, 1918, at the opening of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, plaintiff in error in the within entitled cause will present to said court the within motion to advance the hearing of said cause; a copy of which said motion and of the statement of the grounds thereof, together with a copy of the statement of the case upon which the same is made, hereinbefore set forth, being herewith served upon you.

Dated this 9th day of April, 1918.

Yours, etc.,

E. S. PILLSBURY,
F. D. MADISON,
ALFRED SUTRO,
OSCAR SUTRO,
Attorneys for Plaintiff in Error.

Receipt of a copy of the foregoing notice, and of the papers therein referred to, is hereby admitted this 9th day of April, 1918.

U. S. WEBB,
Attorney General of the State of California.

RAYMOND BENJAMIN,
Chief Deputy Attorney General
of the State of California.
Attorneys for Defendant in Error.

FILED
APR 23 1918
JAMES D. MAHER,
CLERK.

-7-

No. [redacted]262

In the Supreme Court
OF THE
United States

OCTOBER TERM 1917

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION,
Plaintiff in Error,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

E. S. PILLSBURY,
F. D. MADISON,
ALFRED SUTRO,
OSCAR SUTRO,
Attorneys for Plaintiff in Error.

A. D. PLAW,
Of Counsel.

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In the Supreme Court
OF THE
United States

OCTOBER TERM 1917

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION,
Plaintiff in Error,

vs.

FRIEND WM. RICHARDSON, as Treasurer of the State of California,
Defendant in Error.

No. 660

BRIEF FOR PLAINTIFF IN ERROR.

This case is here on writ of error to the Supreme Court of the State of California to review its judgment, affirming the judgment of the Superior Court of that State in favor of defendant in error and against plaintiff in error.

The Bank of California, National Association, a national banking association, plaintiff in error in this court, filed its amended complaint against Friend Wm. Richardson, as Treasurer of the State of California, in the State Superior Court, to recover taxes, paid

by it, under protest, to the State (Rec. p. 2). To this complaint, defendant demurred upon the ground that it did not state facts sufficient to constitute a cause of action (Rec. p. 16). The demurrer was sustained and, plaintiff declining to amend, judgment was ordered for defendant and was entered accordingly (Rec. p. 17). From this judgment plaintiff in error appealed to the Supreme Court of the State of California, which affirmed the judgment upon its opinion rendered in the case of *The Bank of California, N. A., v. Roberts, as Treasurer,* reported in 173 California Reports, commencing at page 398 (Rec. p. 19). The opinion in the *Roberts* case is printed in full in the transcript on file herein (Rec. pp. 20-25).

Statement of the Case.

The case made by the amended complaint, considered in connection with the State laws involved, is as follows (Rec. pp. 2-7):

The Bank of California, prior to February 5, 1910, was a State banking corporation organized under the laws of the State of California. On February 5, 1910, it was converted into a national banking association, under the name of The Bank of California, National Association, with an authorized and subscribed capital stock of 85,000 shares, of the par value of $100. each. Prior to receiving its national charter, the Bank of California was, and ever since has been, the owner of 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., a national banking associa-

tion, doing business in the City of Sacramento, State of California; and of 1001 shares of the capital stock of The Mission Bank, a State banking corporation, doing business in the City and County of San Francisco, in the same State. Under Section 5154 of the Revised Statutes of the United States, as it existed at the time that the Bank of California received its national charter, the bank had the right, after becoming a national bank, to continue in the ownership of any shares of stock, which, as a State Bank, it had theretofore held "in any other bank".

On November 8, 1910, the Constitution of the State of California was amended by adding thereto Section 14 of Article XIII. Subdivision (c) of Section 14 provides for the taxation of the shares of the capital stock of *all banks* to the owners thereof; and declares that such taxation shall be in lieu of all other taxes upon the shares of stock and upon the property of the banks. Its provisions, necessary to be considered here, are as follows:

> "The shares of capital stock of all banks, organized under the laws of this State, or of the United States, or of any other State and located in this State, shall be assessed and taxed to the owners or holders thereof by the State Board of Equalization, in the manner to be prescribed by law, in the city or town where the bank is located and not elsewhere. There shall be levied and assessed upon such shares of capital stock an annual tax, payable to the State, of one per centum upon the value thereof." (In 1915, the rate was raised, by legislative enactment, to one and two-tenths per centum.) "The value of each share of stock in each bank, except such as are in liquidation, shall be taken to be the amount paid in thereon,

> together with its pro rata of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation shall be taken to be its pro rata of the actual assets of such bank. This tax shall be in lieu of all other taxes and licenses, State, county and municipal, upon such shares of stock and upon the property of such banks, except county and municipal taxes on real estate and except as otherwise in this section provided. In determining the value of the capital stock of any bank there shall be deducted from the value, as defined above, the value, as assessed for county taxes, of any real estate, other than mortgage interests therein, owned by such bank and taxed for county purposes. The banks shall be liable to the State for this tax and the same shall be paid to the State by them on behalf of the stockholders in the manner and at the time prescribed by law, and they shall have a lien upon the shares of stock and upon any dividends declared thereon to secure the amount so paid."

To carry into effect this constitutional amendment, the California Legislature, on April 1, 1911, enacted a statute (Statutes of 1911, Part I, page 530). Section 4 thereof contains, simply, a restatement of the provisions of Subdivision (c) of Section 14 of Article XIII of the Constitution. Section 18 thereof provides as follows (p. 544):

> "If any bank shall by resolution of its board of directors, request the state board of equalization to assess to and in the name of such bank so requesting, the entire taxable value of all the shares of the capital stock of such bank, as determined by said state board, instead of assessing such shares to and in the name of the individual stockholders or shareholders owning the same, and if such bank shall promise that it will, upon being notified by said state board, of such assess-

ment thereof to said bank, and of the amount of taxes to be paid upon such assessment, pay such taxes at the times when taxes assessed and levied under this act are due and payable, which request to assess said bank and promise to pay said tax shall be in substantially the following form:

The state board of equalization is hereby instructed to assess in the name of this bank and not to the individual stockholders or shareholders therein, the taxable value of all the shares of capital stock in this bank and such bank hereby promises to pay to the state treasurer the amount of the tax levied upon such assessment when such taxes are due and payable under the laws of this state.

.....

By (here insert title of official signing.)

Then the state board may assess the capital stock to and in the name of such bank and said promise to pay the taxes shall be binding upon such bank and collection of such taxes from such bank may be enforced in the manner and by the same method as is provided for the collection of other taxes assessed and levied under this act."

Prior to the first Monday in March, in the year 1915, the Bank of California, in accordance with the provisions of the section last quoted, requested the State Board of Equalization to assess to it, and in its name, the entire taxable value of all of the shares of the capital stock, issued by it, instead of assessing such shares to and in the name of its individual shareholders; and agreed to pay the tax levied upon such assessment.

The State Board of Equalization, acting under these constitutional and statutory provisions, levied taxes against the Bank of California in the manner following:

In assessing the 85,000 shares of its capital stock to the Bank of California, the Board valued them at $15,775,252.67. In arriving at this value, the Board included therein the sum of $625,546.30, being the assessed value, as fixed by the Board, of the 2501 shares of the capital stock of the Mills Bank, owned by the Bank of California; and also included therein the sum of $121,916.52, being the assessed value, as fixed by the Board, of the 1001 shares of the capital stock of the Mission Bank, owned by the Bank of California. The value of the 85,000 shares of the capital stock of the Bank of California, as thus determined by the State Board of Equalization, was assessed to it; and a tax, at the rate of one and two-tenths per cent, amounting to $189,303.04, was levied against it upon such assessment. The Bank of California paid this tax to the State Controller under protest, as was permitted by Section 23 of the Act of 1911, which provides for the recovery, by suit against the State Treasurer, of taxes illegally collected under the Act, when paid under protest.

Notwithstanding that the State Board of Equalization had thus assessed and taxed the 85,000 shares of the Bank of California upon a valuation, arrived at by including therein the value of the shares of the Mills Bank and of the Mission Bank, owned by the Bank of California, the Board also separately assessed, for the same fiscal year, and against the Bank of California, as a stockholder of the Mills Bank and of the Mission Bank, the same value of such shares of the latter corporations as had been placed thereon by

the Board in determining the value of the 85,000 shares of the Bank of California; and levied taxes upon those values, at the rate of one and two-tenths per cent, against the Bank of California, as a stockholder of the Mission Bank and of the Mills Bank. This tax on these Mission Bank shares amounted to $1463., and, on these Mills Bank shares, amounted to $7506.56. These taxes were also paid to the State Controller, under protest.

In its amended complaint the Bank of California prayed for judgment in these two separate sums of $1463. and $7506.56.

In the trial court, upon the sustaining of defendant's demurrer, for want of facts, to the case thus presented, judgment was entered for defendant. Upon appeal, this judgment was affirmed by the Supreme Court of the State of California. The Supreme Court held that the method of taxation, pursued by the State Board of Equalization, was "in strict compliance with the constitutional method", prescribed by the amendment to the State Constitution (Rec. p. 22); and further held against the contentions of plaintiff in error, asserted in its amended complaint and before the Supreme Court, that this method of taxation, in certain particulars specifically pointed out by plaintiff in error, was forbidden by the Federal Constitution and by Section 5219 of the Revised Statutes of the United States.

Argument on the Question of the Jurisdiction of this Court.

The record shows, *First,* that there was drawn in question the validity of a constitutional provision and statute of the State, under which the taxes complained of were levied, on the ground of their being repugnant to the constitution and laws of the United States, and that the decision of the highest State court was in favor of their validity; *Second,* that the judgment of the Supreme Court of California, to which the writ of error was directed, is a final judgment; and *Third,* that the assignment of errors presents for review the errors complained of.

A.

THE VALIDITY, UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, OF THE STATE CONSTITUTIONAL PROVISION AND STATUTE, IN PURSUANCE OF WHICH THE TAXES COMPLAINED OF WERE LEVIED, WAS DRAWN IN QUESTION AND THE DECISION WAS IN FAVOR OF THEIR VALIDITY.

In its amended complaint, as well as before the State courts, plaintiff in error asserted that the levy of the tax against it, based upon the value of its capital stock which was ascertained by including therein the value of the shares owned by it in the Mission Bank and in the Mills Bank, and the further levy of the tax upon the value of these shares of the Mission Bank and of the Mills Bank to the Bank of California, as a stockholder in those banks, resulted in double taxation; and that such taxation was forbidden by the California Constitution. This contention was, however, overruled by the California Supreme Court, which held that such

double taxation was permitted by the amendment to the California Constitution. As no Federal question is involved in this ruling, we, of course, do not urge the contention here.

Further, in its amended complaint, and before the State courts, plaintiff in error especially set up and claimed that the amendment to the California Constitution, and the statute passed in pursuance thereof, in so far as they required, or permitted, the taxation to plaintiff in error of the shares of stock owned by it in the Mission Bank, a State banking corporation, which was made by the State Board of Equalization, were in contravention, first, of the enactment contained in the last clause of Section 8 of Article I of the Federal Constitution, and, second, of Section 5219 of the Revised Statutes of the United States; it being alleged that these enactments forbid the states to tax any personal property to a national banking association (Rec. p. 6).

The protection of this clause of the Federal Constitution, in addition to that of the section of the Revised Statutes, was claimed because of the decisions of this court that the exclusive power of Congress to charter and control national banks is founded on this clause of the Constitution, which grants to Congress the power to do everything

> "necessary and proper for carrying into effect the powers vested in the government of the United States".
>
> *McCulloch v. Maryland,* 4 Wheat. 316;
>
> *Easton v. Iowa,* 188 U. S. 220.

It was further, in the amended complaint and before the State courts especially claimed that, as the State had no power to tax to the Bank of California the shares of the Mission Bank, owned by it, as was done by the State Board of Equalization; that, as no provision, other than the unlawful one by which the State sought to tax the Mission Bank shares directly to the Bank of California, was made by the California law under which the value of these shares of the Mission State Bank could be taxed more than once; that, therefore, the provision of the California Constitution and laws, permitting double taxation of the value of the shares of the capital stock of the Mills National Bank, owned by the Bank of California, by taxing the value of those shares directly to the Bank of California, as owner, and by also including the value thereof in the assessment of the shares of the capital stock of the Bank of California, upon which a tax was levied against it, effected an unlawful discrimination against the Mills National Bank shares and in favor of the Mission State Bank shares, and was, therefore, in contravention of the provisions of the Federal Constitution and of the Revised Statutes, above referred to, which also forbid the taxation by a State of the shares of a national bank at a greater rate than is assessed upon other moneyed capital invested in State banks (Rec. p. 6).

The setting up in the complaint of the claims of unconstitutionality, in the manner aforesaid, was a

proper method of "drawing in question" the validity of the California laws.

Mutual Life Ins. Co. v. McGrew, 188 U. S. 291, 308;

Atlantic Coast Line R. R. Co. v. Mims, 242 U. S. 532, 535.

Moreover, the Supreme Court of California, in its opinion, expressly passed upon the claims of unconstitutionality asserted by plaintiff in error, and ruled against plaintiff in error (Rec. p. 24). This fact alone

"is sufficient to confer jurisdiction upon this court * * *".

Mallinckrodt Works v. St. Louis, 238 U. S. 41, 49;
Cisna v. State of Tennessee, 38 Sup. Ct. Rep. 306.

B.

THE JUDGMENT OF THE CALIFORNIA SUPREME COURT IS FINAL.

I.

The Judgment Is Final on the Face of the Record.

In its amended complaint, the Bank of California fully stated its case. When the Superior Court sustained defendant's demurrer thereto, it did not, therefore, ask leave to further amend. Thereupon the trial court ordered

"that said demurrer be and the same is hereby sustained; further ordered that judgment be and the same is hereby entered for defendant" (Rec. p. 17);

and judgment was entered for the defendant as follows:

"It is ordered, adjudged and decreed that The Bank of California, National Association, a cor-

> poration, plaintiff, do take nothing by its said action as against Friend Wm. Richardson, as Treasurer of the State of California, defendant, but that judgment be and the same is hereby *entered herein in favor of said defendant and against said plaintiff* for said defendant's costs and disbursements incurred in this action, amounting to the sum of $....." (italics ours) (Rec. p. 17).

Upon the appeal, taken by plaintiff in error to the Supreme Court of the State of California, that court made the following order respecting the judgment appealed from:

> "The judgment is affirmed" (Rec. p. 19).

The judgment of the trial court being absolute for the defendant and the Supreme Court having unqualifiedly affirmed that judgment, it thus appears, on the face of the record, that the ruling of the appellate court determined the case. And

> "as this court has said, 'all judgments and decrees which determine the particular cause' are final in the sense of the statute. *Weston v. Charleston*, 2 Pet. 449, 463-465; *Central Transportation Co. v. Pullman Co.*, 139 U. S. 24, 40; *Mt. Vernon Cotton Co. v. Alabama Power Co.*, 240 U. S. 30."
>
> *Detroit etc. Ry. Co. v. Michigan R. R. etc. Co.*, 240 U. S. 564, 571.

II.

The Judgment Is Final Under the California Law.

In ascertaining whether the judgment of a State appellate court is final, this court may consider the effect of that judgment upon further proceedings in

the trial court under the laws and practice of the State. This was done in *Schlosser v. Hemphill,* 198 U. S. 173.

A reference to the California decisions and statutes shows conclusively that the judgment of affirmance, entered by the California Supreme Court, finally disposed of the case and permitted no further proceedings to be taken by the trial court; and was, therefore, "final in the sense of the statute" (*Detroit etc. Ry. Co. v. Michigan R. R. etc. Co., supra).*

Under the California statute an appeal may be taken from a judgment only when the same is final as to the trial court (*Code of Civil Procedure*, p. 963).

Under the practice, long settled in California, no appeal lies from an order sustaining a demurrer to a complaint. The only manner in which such an order may be reviewed is by the plaintiff standing on his pleading and permitting judgment to be entered against him. From this judgment he may appeal and, upon the appeal, the question of the correctness of the ruling upon the demurrer in the court below may be determined.

In *Ashley v. Olmsted,* 54 Cal. 616, in speaking of the review of an order sustaining a demurrer, the court said:

> "The only method of review of such proceedings here is through an appeal from the final judgment thereafter entered in the action itself, if such judgment be unfavorable."

See also:

Agard v. Valencia, 39 Cal. 292;
Hibberd v. Smith, 39 Cal. 145;
Wood, Curtis & Co. v. Missouri etc. Ry. Co., 152 Cal. 344.

It is also well settled in California that, where a demurrer to a complaint is sustained by the trial court and judgment is thereupon entered in favor of the defendant, such judgment is final therein; and that, when affirmed by the State Supreme Court, there is, in the language of this court in *Rio Grande Railway Co. v. Stringham,* 239 U. S. 44, 47,

> "left nothing to the judicial discretion of the trial court".

In *People v. Jackson,* 24 Cal. 630, 633, a demurrer to the complaint was sustained; thereupon, judgment was entered for defendant, from which plaintiff appealed. The State Supreme Court affirmed the judgment and held that it was without power to grant to the plaintiff the right to proceed further in the trial court, saying:

> "We are asked to modify our judgment so as to grant the relator leave to amend his complaint. However much we might be disposed to grant the petition in this respect, we are precluded from doing so by the course which counsel saw fit to pursue in the court below. We can only review the action of the court below, and if that be found right, the only judgment which we can render is one of affirmance. The relator had leave to amend his complaint in the court below, but declined to do so—electing to stake his fortune upon the complaint as it then stood. Had he asked leave to

> amend, and had leave to amend been refused, there would have been action on the part of the court which we could review. As it is, there has been no action in the court below adverse to the relator's right to amend, and it follows that no action can be had upon the question in this court."

In *Sutter v. San Francisco,* 36 Cal. 112, 117, a demurrer was sustained to the complaint and judgment went for defendant. Plaintiff appealed from the judgment. The Supreme Court affirmed the judgment and held that such affirmance prevented any further proceedings in the trial court. The court said:

> "He chose to stake his case upon the demurrer, and final judgment was accordingly entered upon it. The appeal is from the judgment, and we find no error to vitiate it. We hold that the court committed no error, so far as the record shows its action, and that the judgment is in all respects legal. We cannot, therefore, reverse it, for we find no error to justify such action, and plaintiff cannot now amend, because there is a valid final judgment; and there is nothing more to be done, without first reversing this judgment. It would be an anomaly in legal proceedings to hold the judgment in all respects correct, and then arbitrarily reverse it. But this point is settled. (*People v. Jackson,* 24 Cal. 633.)"

In *Kirby v. Superior Court,* 68 Cal. 604, a judgment was entered in the lower court in favor of the defendant, upon the sustaining of his demurrer to the complaint. Upon appeal the Supreme Court affirmed this judgment, holding that, upon such affirmance, the judgment of the lower court became a final judgment, saying:

> "The judgment which they appealed from having been affirmed, there is an end of the litigation."

It plainly cannot be open to question, it is submitted, that the affirmance by the Supreme Court of the judgment of the trial court finally disposed of the whole case, and deprived the trial court of the power to take any further proceedings therein. Consequently, the judgment of the California Supreme Court is final.

III.

It Is the Rule of This Court That the Affirmance of a Judgment, Rendered Upon the Sustaining of a Demurrer to a Complaint, Is a Final Judgment Where, as Here, the Trial Court Cannot Proceed Further.

The present case is in nowise similar to the case of *Missouri & Kansas Interurban Ry. v. Olathe*, 222 U. S. 185, where this court dismissed a writ of error to the Supreme Court of Kansas upon the ground that there had been no final judgment. There, the State court had affirmed an *order* sustaining a demurrer. But, unlike the practice in California,

> "this merely sustained the demurrer without dismissing the suit. The Supreme Court did not direct its dismissal, but the cause was left standing in the court below for such proceedings as might be had according to law after the decision on the demurrer, either by amendment of the petition or entry of final judgment" (p. 186).

The decision in the *Olathe* case was thus based entirely upon the proposition that the affirmance of the judgment left it open to the plaintiff to take

> "such proceedings as might be had according to law after the decision on the demurrer, either by amendment of the petition or entry of final judgment" (p. 186).

That the sole ground of the decision in the *Olathe* case was the fact that the affirmance by the Kansas Supreme Court left open to the plaintiff the right to proceed further in the trial court is made manifest by the following cases, cited in the opinion in support of the conclusion reached.

In *Miners' Bank v. U. S.*, 5 How. 213, the judgment sustaining the demurrer, and which was affirmed by the State Supreme Court, still left it open to the party, as to whom it had been affirmed, to proceed further with his suit in the trial court.

In *McComb v. Commissioners of Knox County*, 91 U. S. 1, there was a reversal of the judgment by the State appellate court, with no direction to enter a judgment against the party as to whom a reversal was ordered. On the other hand, there was an express direction to the trial court "to proceed with the case according to law" (p. 2).

In *Great Western Telegraph Co. v. Burnham*, 162 U. S. 339, the judgment of the State Supreme Court was held not to be a final judgment, because it

> "only reversed the order of the inferior court overruling the demurrer, and remanded the case to that court for further proceedings" (p. 342).

In *Haseltine v. Central Bank of Springfield*, 183 U. S. 130, the judgment of the appellate court was held not to be final, because it reversed the judgment of the court below and remanded the case for further proceedings.

But, as has been shown, under the well settled practice in California, where a judgment for a defendant

is affirmed, which has been entered by the trial court upon the sustaining of a demurrer to a complaint, that judgment becomes a finality; and the case is not subject to any further proceedings whatsoever in the trial court.

The decisions of this court have been uniform to the effect that the judgment of a highest State court, affirming a judgment entered for a defendant upon the sustaining of a demurrer to a complaint, is a final judgment which will support its jurisdiction, when it does not appear that further proceedings may be had in the trial court.

In *Carondelet Canal etc. Co. v. Louisiana,* 233 U. S. 362, the court, in distinguishing the *Olathe* case, said that there the State Supreme Court had left the suit to "stand in the court below" (p. 372).

Aberdeen Bank v. Chehalis County, 166 U. S. 440, was a case arising under Section 5219 of the Revised Statutes. The bank filed a complaint in the State court, which was demurred to by the defendants. The report of the case recites that

> "the demurrer having been sustained, and the complainant having refused to amend its complaint, judgment was entered in the said court, September 13, 1892, in favor of the defendants. The complainant took the case upon writ of error to the Supreme Court of the State, where the judgment was affirmed. 6 Washington 64. The complainant then sued out a writ of error bringing the case here" (p. 440).

The court was necessarily of the opinion that the judgment of the State Supreme Court was final; for it

took jurisdiction and affirmed the judgment of the State court.

Rogers v. Hennepin County, 240 U. S. 184, is quite similar to the case at bar. There the defendants demurred to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action. The trial court, the opinion recites,

> "sustained the demurrer, and thereupon judgment was entered in favor of the defendants" (p. 186).

Plaintiff appealed to the Supreme Court of the State. That court affirmed the judgment by its order reading "Judgment affirmed" (p. 187). This court assumed jurisdiction and affirmed the judgment of the State court.

It is entirely clear, we submit, that the affirmance by the California Supreme Court, in the case at bar, disposed of the whole case on the merits and left nothing to the discretion of the trial court. It was, therefore, final within the meaning of Section 237 of the Judicial Code, and subject to review here.

> *Rio Grande Railway Co. v. Stringham,* 239 U. S. 44, 47.

C.

THE ERRORS COMMITTED BY THE CALIFORNIA SUPREME COURT, AND SOUGHT TO BE REVIEWED, ARE SPECIFIED IN THE ASSIGNMENT OF ERRORS.

The errors of the State Supreme Court, relied upon here for a reversal, are set forth in detail in the

assignment of errors to this court. They are as follows (Rec. pp. 27, 28):

"First. The Supreme Court of the State of California erred in affirming the judgment in favor of the defendant in said cause, in the Superior Court of the State of California in and for the City and County of San Francisco; and in refusing to reverse said judgment.

Second. The Supreme Court of the State of California erred in holding and deciding that the law of the State of California, in requiring and permitting the taxation to plaintiff in error, by said State, of the shares of the capital stock of The Mission Bank, a California corporation, owned by plaintiff in error, was not in contravention of Section 5219 of the Revised Statutes of the United States.

Third. The Supreme Court of the State of California erred in holding and deciding that Section 5219 of the Revised Statutes of the United States confers the power upon the State of California to tax to plaintiff in error the said shares of The Mission Bank, owned by plaintiff in error.

Fourth. The Supreme Court of the State of California erred in holding and deciding that, because Section 5219 of the Revised Statutes of the United States authorizes the State of California to tax to plaintiff in error the shares of the capital stock of The National Bank of D. O. Mills & Co., owned by plaintiff in error, it follows that said Section 5219 authorizes the taxation to plaintiff in error of the shares of the capital stock of The Mission Bank, owned by plaintiff in error.

Fifth. The Supreme Court of the State of California erred in not holding and deciding that, as the shares of The Mission Bank, owned by plaintiff in error, cannot be taxed to it by the State, the attempted double taxation under the State law of the value of the shares of the capital stock in The National Bank of D. O. Mills & Co., owned

by plaintiff in error, is an unlawful discrimination against the latter shares and, consequently, void under Section 5219 of the Revised Statutes.

Sixth. The Supreme Court of the State of California, in upholding the State law providing for the taxation to plaintiff in error of the shares of The Mission Bank, owned by it, failed to give effect to the last clause of Section 8 of Article I of the Constitution of the United States.

Seventh. The Supreme Court of the State of California, in upholding the State law providing for the taxation to plaintiff in error and to its stockholders, of the value of the shares of The National Bank of D. O. Mills & Co., owned by it, failed to give effect to the last clause of Section 8 of Article I of the Constitution of the United States."

Argument on the Constitutional Questions Involved.

A.

THE STATE CANNOT TAX THE SHARES OF THE MISSION STATE BANK, OWNED BY THE BANK OF CALIFORNIA, BECAUSE NO PERMISSION SO TO DO HAS BEEN GRANTED BY CONGRESS.

I.

The State Has No Power, Except That Expressly Granted by Congress, to Tax National Banks; and No Power Has Been Granted to Tax the Personal Property of National Banks.

It is thoroughly settled that the States would be wholly without power to levy any tax, either direct or indirect, upon national banks, their property, assets or franchises, were it not for the permissive legislation of Congress embodied in Section 5219 of the Revised Statutes. Under this section, the States are

not permitted to tax to a national bank any personal property belonging to it, with the single exception of shares owned by it in another national bank. To this exception we will hereinafter more particularly refer. The right to tax, with the sole exception just mentioned, is expressly limited to the taxation of its real property to the bank and, subject to certain restrictions, to the taxation of its shareholders.

People v. Weaver, 100 U. S. 539;

Rosenblatt v. Johnston, 104 U. S. 462;

Talbott v. Silver Bow County, 139 U. S. 438;

> "This section (5219), then, of the Revised Statutes is the measure of the power of a state to tax national banks, their property or their franchises. By its *unambiguous provisions,* the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. *Any tax therefore which is in excess of and not in conformity to these requirements is void*" (italics ours).
>
> *Owensboro National Bank v. Owensboro,* 173 U.S. 664, 669.

II.

The Right of the State to Tax to the Bank of California the Mission State Bank Shares, Owned by It, Is Implied by the California Supreme Court, Solely, Upon the Asserted Ground That Its Existence Is Essential to an Exertion of the State's Express Power to Tax the Mills National Bank Shares, Owned by the Bank of California.

The California Supreme Court, in its opinion, does not deny that the shares of the Mission State Bank, owned by the Bank of California, are personal prop-

erty; nor does it find any *express authority* in the federal statute permitting the State to tax these shares to the Bank of California, a national banking association. But, that court says, because the Federal Supreme Court held in *Bank of Redemption v. Boston,* 125 U. S. 60, that shares in one national bank in the hands of another national bank may be taxed to the latter (Rec. p. 24):

> "No different rule could be applied to the taxation of shares in a state bank owned by a national bank without violating the provision of section 5219 requiring 'other moneyed capital' to be assessed at a rate equal to that imposed upon shares in national banks. If the section authorizes the taxation of shares owned by a national bank in another national bank, *it must necessarily contemplate a like taxation of shares in state banks similarly owned*" (italics ours).

III.

This Implication Cannot Be Indulged, First, Because It Results in the Violation of a Statutory Prohibition; and Second, Because in Any Event, It Is Unnecessary to an Exertion of the Power, Granted by Congress to the State, to Tax the Mills National Bank Shares, Owned by the Bank of California.

1. The power to tax the Mission State Bank shares cannot be implied, because it would result in the violation of the prohibition of Section 5219.

The State cannot tax to a national bank the shares of a State bank, owned by it, because the power to do so has not been granted by Congress. And the effect of limiting the power of the States to the right to tax the real property of national banks and their shares

is *to prohibit* the taxation of the property of those banks in any other manner. Where, as here, the

> "statute limits a thing to be done in a particular mode, it includes a negative of any other mode".
>
> *Raleigh v. Reid,* 13 Wall. 269, 270.

Section 5219, as was held in *National Bank of Redemption v. Boston, supra, permits* national bank shares owned by another national bank, to be taxed by the State; but with the *limitation* that such taxation shall not be at a greater rate than that assessed upon other moneyed capital invested in State banks; and it *forbids* the taxation by the States of shares of a State bank, owned by a national bank. It is plain, therefore, that, under no rule of interpretation, may the *prohibition* against taxing State bank shares, owned by a national bank, be held inoperative in order to allow the exercise by the State of the *purely permissive power* conferred to tax national bank shares, owned by another national bank, at a rate not greater than that imposed upon other moneyed capital invested in State banks. If, in a particular instance, the *limited permission* granted by the statute to tax national bank shares, owned by another national bank, could not be exerted without a violation of this *prohibition*, the necessary result would be that such national bank shares could not be taxed at all.

It is true that in *Bank of Redemption v. Boston, supra,* it was held that, under Section 5219, a State had the power to tax directly to a national bank, shares owned by it in another national bank. But this case can afford no support to a contention that, by

implication, the power can be deduced from Section 5219 to tax State bank shares owned by a national bank. By the express terms of Section 5219, it is provided that:

> "Nothing herein shall prevent *all* the shares in any association from being included in the valuation of the personal property of the *owner or holder of such shares,* in assessing taxes imposed by authority of the State * * *" (italics ours).

Thus, direct authority is given to tax "*all* the shares of its capital stock without regard to their ownership" (*Bank of Redemption v. Boston,* 125 U. S. at page 70); and, therefore, this authority necessarily includes, by *express* enactment, the power to tax national bank shares owned by another national bank.

2. An implication of this power cannot be made, because wholly unnecessary to the exercise of the power granted to tax the Mills National Bank shares, owned by the Bank of California.

We think it manifest that the *prohibition,* included in Section 5219, against a State's taxing the shares of a State bank, owned by a national bank, is not susceptible of being eliminated by construction, in order that the *purely permissive* power of the State to tax national bank shares, owned by another national bank, may be exercised without infringing the limitation that national bank shares cannot be taxed at a greater rate than other moneyed capital. But if this be not so, nevertheless, the prohibition of the statute must remain operative, *because its mandate may be obeyed, and still the State may tax the national bank shares, owned by another*

national bank, to the latter, without infringing this limitation of Section 5219.

a. *No implication of power to tax the Mission State Bank shares to the Bank of California could be permissible, unless absolutely essential to the taxing of the Mills National Bank shares owned by it.*

As the States have no power to tax national banks, excepting in so far as that power has been expressly conferred by Congress, the grant of power, embodied in Section 5219 is subject to the familiar rule that a legislative grant cannot be held to include anything not conferred, either directly or by *necessary implication.*

> "An alleged surrender or suspension of a power of government respecting any matter of public concern must be shown by *clear and unequivocal language*" (italics ours).
>
> *Belmont Bridge v. Wheeling Bridge,* 138 U. S. 287, 292.

In *Austin v. The Aldermen,* 7 Wall. 694, 699, Mr. Justice Swayne said, in speaking of the power of the States to tax national banks:

> "It is well settled that the states cannot exercise this authority in respect to any of the instrumentalities which the general government may create for the performance of its constitutional functions. It is equally well settled, that this exemption may be waived wholly, or with such limitations and qualifications as may be deemed proper, by the law-making power of the nation; *but the waiver must be clear, and every well-grounded doubt upon the subject should be resolved in favor of the exemption*" (italics ours).

As was said of Section 5219 in *Owensboro National Bank v. Owensboro,* 173 U. S. at page 699:

> "By its *unambiguous provisions the power is confined* to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any state tax therefore which is in excess of and not in conformity to these requirements is void" (italics ours).

Plainly, therefore, upon no possible assumption, may the power to tax the shares of the Mission State Bank to the Bank of California be drawn by implication from the "unambiguous provisions" of Section 5219, unless it clearly and certainly appears that, without such taxation of these shares to the Bank of California, the limited power, granted to the State by Congress, to tax the Mills National Bank shares to the Bank of California, is wholly impossible of execution. As was observed by this court, in *Newton v. Commissioners,* 100 U. S. 548, 561, in referring to a grant from the sovereign:

> "Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given *in unmistakable terms or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is vital to the claim"* (italics ours).

b. *The implication of power in the State to tax the Mission Bank shares is wholly unnecessary to the exercise of its power to tax the Mills Bank shares.*

The State Supreme Court does not deny the soundness of the rule of interpretation, to which we have adverted. It is of opinion, not that the power implied by it may be so implied *as a matter of convenience,*

but only *as a matter of necessity* to carry out the power expressly granted. It says that the right to tax national bank shares, conferred by the statute, is limited to a tax which is at a rate not greater than that imposed upon "other moneyed capital", invested in State banks. Therefore, it is of opinion that if the shares of a national bank, owned by another national bank, were taxed to the latter, while the latter's shares in a State bank were not so taxed, there would be a violation of this limitation of Section 5219. Wherefore, that court concludes:

> "If the section authorizes the taxation of shares owned by a national bank in another national bank, it must *necessarily contemplate* a like taxation of shares in state banks similarly owned" (italics ours) (Rec. p. 24).

This implication of the power of the State to levy the tax to the Bank of California upon its shares in the Mission Bank thus proceeds, solely, upon the theory that, if the Mission State Bank shares cannot be taxed to the Bank of California, the power, expressly granted by Section 5219 to tax the Mills National Bank shares to the Bank of California, cannot be exercised. *But the California court, following the decisions of this court, had formerly announced a doctrine, under which the right to tax the Mills National Bank shares to the Bank of California is in nowise dependent upon the taxation to the Bank of California of the Mission State Bank shares, owned by it.*

In *Crocker v. Scott*, 149 Cal. 575, the California Supreme Court, in bank, had squarely before it the question whether the taxation of national bank shares

to the owners thereof and the taxation of the property of State banks directly to the banks, when the shareholders of the State banks were expressly exempted from taxation, violated the limitation of Section 5219 of the Revised Statutes, which forbids taxation by the States of national bank shares at a greater rate than that imposed upon other moneyed capital in the hands of individual citizens of the State. Answering this question, the California Supreme Court, following the decisions of this court in *Davenport National Bank v. Davenport*, 123 U. S. 83, and in *San Francisco National Bank v. Dodge*, 197 U. S. 70, held that, as shares of stock have no value apart from the corporate capital which they represent, *national bank shares may be taxed to the owners thereof and the "other moneyed capital" of State banks may be taxed to the latter directly, and their shareholders exempted from taxation, without infringing the limitation of Section 5219.*

The doctrine of the *Crocker* case, and of the decisions of this court upon which it is founded, *is thus wholly at variance with the premise upon which the implication of power to tax the Mission Bank shares in the present case is expressly rested.* The conclusion of the California Supreme Court, therefore, has no foundation whatsoever for its support; and, we submit, the taxation to the Bank of California of the Mission State Bank shares, owned by it, was plainly violative of the Federal Constitution and statute.

B.

AS THE SHARES OF THE MISSION STATE BANK CANNOT BE TAXED TO THE BANK OF CALIFORNIA AT ALL, THE DOUBLE TAXATION OF THE VALUE OF THE MILLS NATIONAL BANK SHARES, OWNED BY THE BANK OF CALIFORNIA, OFFENDED AGAINST THE LIMITATION OF SECTION 5219, AND WAS VOID.

The value represented by the shares of the Mission State Bank, owned by the Bank of California, might be taxed by the State, under the power conferred by Section 5219, either by taxing the capital of the Mission Bank directly to the latter, which the present State Constitution expressly forbids; or by including the value of those shares in the assessment of the assets of the Bank of California, and taxing the value of those assets to the latter's shareholders, as is provided by the terms of the State Constitution and statute, and as was done in the present case. *But the State is without the power under the Federal statute, to tax the value of the Mission State Bank shares directly to the Bank of California, a national banking association,* as was also attempted by the State Board of Equalization and as is permitted by the State law.

I.

Under the Necessary Construction of the State Law, the Value of the Mission State Bank Shares, Owned by the Bank of California, Is Taxed but Once, and the Value of the Mills National Bank Shares, Owned by It, Is Taxed Twice.

The State law provides for the levy of taxes upon the Mills National Bank shares and the Mission State

Bank shares, owned by the Bank of California, *not only* by including their value in the capital of the Bank of California, upon which a tax is imposed upon its shareholders and paid by it as agent for those shareholders; *but also* by taxing the value of those shares directly to the Bank of California, as owner thereof. This, as the California Supreme Court concedes, results in double taxation both of the value of these Mission Bank and of these Mills Bank shares; although it holds that such taxation is not forbidden by the present State Constitution. No other taxes are permitted by the State law to be levied upon the value of the Mills Bank or Mission Bank shares, owned by the Bank of California. The California Constitution expressly declares that the taxes levied on the shares of the capital stock of all banks "shall be in lieu of all other taxes * * * upon such shares of stock and upon the property of such banks".

As the *attempt of the State to tax the Mission Bank shares directly to the Bank of California must fail,* because in contravention of the Federal statute, and *as the State law does not permit any other taxation of the value thereof,* except by including that value in the assets of the Bank of California, which is assessed to the latter's shareholders, the effect of that law is to tax the value of the shares of the Mission Bank, owned by the Bank of California, *but once,* while taxing the value of the Mills National Bank shares *twice,* once directly to the Bank of California, as a shareholder, and again by including the value thereof in the assets of the Bank of California, upon which a tax is assessed against the latter's shareholders.

II.

This Method of Taxation Is in Violation of the Express Provision of Section 5219, Forbidding Discrimination Against National Bank Shares.

That such a method of taxation results in the taxation of the national bank shares of the Mills Bank, owned by the Bank of California, *at a rate twice as great as that imposed upon the "other moneyed capital"*, represented by its Mission State Bank shares, and is an unlawful discrimination against its national bank shares of the Mills Bank, forbidden by Section 5219 of the Revised Statutes, cannot, we think, be open to doubt.

Section 5219 of the Revised Statutes provides that State taxation of national bank shares

> "shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State * * *".

It was said in *Mercantile Bank v. New York*, 121 U. S. 138, 157, of this provision:

> "The terms of the act of Congress, therefore, *include* shares of stock *or other interests owned by individuals* in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money" (italics ours).

Part of the money contributed by individual stockholders, citizens of California, owning shares of the capital stock of the Bank of California, is invested by that bank in the shares of The Mission Bank, a California banking corporation. These individual share-

holders of the Bank of California, by reason of this investment of their money, are the ultimate owners of "interests" in a State "enterprise", to wit, The Mission Bank, "in which the capital employed in carrying on its business is money". Therefore, the capital of The Mission Bank, so contributed by the individual shareholders of the Bank of California, constitutes

> "moneyed capital, in the hands of individual citizens of such State",

"other" than that invested in the shares of stock in the Mills National Bank, owned by the Bank of California, under the definition, given to this expression by this court, in *Mercantile Bank v. New York, supra.*

This being so, the taxation, by the State, of the national bank shares of The National Bank of D. O. Mills & Co., owned by the Bank of California, at a rate *twice as great* as that imposed upon the "other moneyed capital", invested in the Mission Bank shares, owned by the Bank of California, resulted in a discrimination against the national bank shares of the Mills Bank, owned by the Bank of California, forbidden by the express provision of Section 5219 of the Revised Statutes; for, as was said in *Mercantile Bank v. New York, supra,* at page 155:

> "A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time *similar investments and similar employments under the authority of State laws were exempt from an equal burden.* The main purpose, therefore, of Congress, in fixing limits to State taxation on investments in the shares of national banks, was to render it impossi-

ble for the State, in levying such a tax, to create and foster an equal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character" (italics ours).

It is respectfully submitted that the constitutional and statutory provisions of the State of California, in so far as they require or permit the tax to be levied against plaintiff in error, as a stockholder of the Mission State Bank, or require or permit the value of the Mills National Bank shares, owned by plaintiff in error, to be taxed twice, while the value of the Mission Bank shares, owned by plaintiff in error, is taxed but once, violate the Federal Constitution and Section 5219 of the Revised Statutes and are, to that extent, void; and that, therefore, the judgment of the California Supreme Court should be reversed.

Dated, San Francisco,
April 6, 1918.

E. S. Pillsbury,
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No.——

IN THE

Supreme Court of the United States

October Term, 1918.
No. 660.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION,
Plaintiff in Error,

vs.

FRIEND WM. RICHARDSON, AS TREASURER OF THE STATE OF CALIFORNIA,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The Bank of California National Association on the first Monday in March, 1915, had an authorized and issued capital stock of 85,000 shares which, after deduction of assessed values of real estate owned by the bank, was determined by the State Board of Equalization to be of the value of $15,775,252.67, and taxed for state purposes in the sum of $189,303.04.

On such first Monday in March, 1915, the bank owned 2,501 shares of the capital stock of the

National Bank of D. O. Mills & Co. and 1,001 shares of the capital stock of the Mission Bank, both of said banks being organized, located and doing business in this state, and both being assessed and taxed upon the value of their respective shares of stock in manner similar to the assessment of plaintiff.

For the reason that the state taxed the value of all of the stock of the D. O. Mills Bank and of the Mission Bank, and at the same time taxed the value of plaintiff's bank stock (into which the value of the Mills and Mission Bank Stock entered), plaintiff claims a double taxation occurred to the extent of the tax on the Mills Bank stock owned by plaintiff; and that the taxation of the Mission Bank shares owned by plaintiff violates section 5219 Revised Statutes and section 8 Article I of the Constitution of the United States. A return of the proportion of plaintiff's tax which represents the tax upon the Mills and Mission Bank stock, is sought.

ARGUMENT ON QUESTIONS INVOLVED.

The tax levied by the state in this case is a tax upon "the shares of capital stock" of a bank organized under the laws of the United States and located in this state, and is a tax "assessed and taxed to the owners or holders thereof," that is the owners or holders of the shares of capital stock of the bank. (Section 14, Article XIII, Subdivision (*c*), Constitution.)

The Constitution, after conferring the power to tax shares of capital stock of a national bank as above indicated, proceeds to provide the amount of such tax as follows:

> "There shall be levied and assessed upon such shares of capital stock an annual tax, payable to the state, of one per centum upon the value thereof. The value of each share of stock in each bank * * * shall be taken to be the amount paid in thereon, together with its pro rata of the accumulated surplus and undivided profits. * * * This tax shall be in lieu of all other taxes and licenses, state, county and municipal, upon such shares of stock and upon the property of such banks, except county and municipal taxes on real estate and except as otherwise in this section provided. In determining the value of the capital stock of any bank there shall be deducted from the value, as defined above, the value as assessed for county taxes, of any real estate, other than mortgage interests therein, owned by such bank and taxed for county purposes."

After the adoption of this provision of the Constitution, the rate of tax on such bank shares was increased to 1.2 per cent by act of Legislature in accordance with constitutional authority.

The provision of the Constitution from which the above is quoted thereupon proceeds to constitute each bank the agent of the state in the collection and pay-

ment of the tax to the state. This provision reads as follows:

> "The banks shall be liable to the state for this tax and the same shall be paid to the state by them on behalf of the stockholders in the manner and at the time prescribed by law and they shall have a lien upon the shares of stock and upon any dividends declared thereon to secure the amount so paid."

It is not contended that the stockholders of plaintiff in this action do not fall within the provision of the quoted section of our Constitution, nor is any contention made that the section violates any of those decisions of the courts which have so frequently held that taxation schemes applied to national bank stock discriminated against them and in favor of other moneyed capital.

The tax in a case of this kind is not a tax upon the bank, nor upon the capital of any bank as such, and this fact must be constantly kept in mind. The tax is upon the shares of shareholders, and such tax is determined by the value of their shares in the bank, which value is ascertained by the State Board of Equalization, in accordance with the rule specified and fixed by the Constitution. It being conceded that the stock of all of these banks is primarily taxable to the shareholders, there can be no question of double taxation in the case. The plaintiff in this case, as a corporation, is the stockholder of the Mills stock and Mission Bank stock, and in its capacity as a stockholder is liable for the tax upon the Mills and

Mission shares. The stock held by the plaintiff as a corporation consists of certain paper certificates issued by the Mills Bank and Mission Bank which are held in the treasury of the plaintiff bank in lieu of a certain amount of its capital, surplus or undivided profit, which has been delivered by plaintiff in actual coin for said stock. The stockholders of plaintiff, as such, have no right or title to any portion of the Mills or Mission Bank stock. The status of plaintiff's stockholders is entirely separate and distinct from the status of the corporation itself as a stockholder of the Mills Bank and the Mission Bank. The tax upon the Mills stock and the Mission stock paid by the plaintiff corporation as a stockholder in no way concerns or affects the tax upon the value of the stock held by the stockholders in the plaintiff corporation, who pay upon the value of their shares in plaintiff corporation. The plaintiff corporation, so far as the tax upon its stockholders' shares is concerned, is but the agent of the state to collect such tax from its shareholders and pay it to the state. In this respect, its position is entirely different from that of a stockholder paying a stockholder's tax upon the Mills Bank stock and the Mission Bank stock.

In

Merchants' Bank vs. *Pennsylvania*, 167 U. S. 461,

the court said:

"That the state had the right to make the bank its agent to collect the tax from the individual

stockholders was settled in *National Bank* vs. *Commonwealth,* 9 Wall. 353.

It is further urged that there is discrimination because as to those state banks that do not elect to pay the eight mills the auditor general is required to look to the stockholders directly for the regular four mills tax, whereas as to national bank he reaches the stockholders through the bank itself, and hence it is said that some shareholders in state banks may escape taxation. But this is a mere matter of procedure. It is no objection to the law that it makes the national bank the agent to collect and does not compel the state bank to do the same."

In each instance the matter that is determinative of the tax upon the stockholder is the ascertained value of his shares of stock. All of the capital surplus and undivided profit of the Mills Bank, irrespective of from whence it came, is considered in arriving at the value of the Mills Bank stock, upon which value the stockholders thereof pay a tax. The same situation is true with respect to the Mission Bank stock. All of the capital, surplus and undivided profit of plaintiff is considered in ascertaining the value of the stock in plaintiff bank, irrespective of what it is invested in. As soon as plaintiff corporation paid from its treasury funds for the Mills stock, the representative value of such funds went into the treasury of plaintiff in lieu thereof, to wit, the stock so purchased. If such capital, surplus or undivided profit of the plaintiff bank had not been paid out for shares of stock in the other banks but had constantly

remained in the coffers of plaintiff bank, or had been invested in government bonds, there could be no question that such capital, surplus or profit would enter into and constitute a part of the value of the stock of plaintiff in the hands of its stockholders. Is it not equally apparent that the representative of that capital, surplus or profit also enters into and constitutes a part of the value of the stock of the plaintiff?

Plaintiff in error predicates its first attack upon the tax in question upon a construction of section 5219 of the Revised Statutes that, in view of the requirements of that section of the Revised Statutes, can not be approved. Plaintiff asserts that

> "the state can not tax to a National Bank the shares of a state bank, owned by it, because the power to do so has not been granted by congress."

Section 5219 of the Revised Statutes of the United States reads as follows:

> "Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of national banking associations located within the state, subject only to the two restrictions, that the taxation shall not be a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by nonresidents of any state

shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either state, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

The basis of the attack made by plaintiff in error upon the tax lies in the fact that the shares of Mission Bank stock owned by plaintiff in error are personal property. Proceeding to argue its case in the light of the many decisions that have held that the personal property of a national bank is not subject to taxation by the state, plaintiff in error claims that to compel it, as a stockholder of the stock of the Mission Bank, to pay a tax upon the Mission Bank stock, is violative of the above cited section of the Revised Statutes and of the decisions which announce the rule that personal property owned by a national bank is not subject to taxation by the state.

This court did not hesitate, when a similar situation presented itself, to hold that shares of stock owned by a national bank in another national bank were subject to taxation in the hands of the national bank stockholder.

Bank of Redemption vs. *Boston*, 125 U. S. 60.

Plaintiff in error endeavors to argue that the court approved of the tax in *National Bank of Redemption* vs. *Boston*, merely because the shares subjected to the tax were shares in another national association, but an examination and analysis of the case demon-

strates that the decision is not subject to the construction placed upon it by plaintiff in error, and discloses the fact that the decision did not turn solely upon the feature that the shares in question were permitted to be taxed merely because they were shares in a national association, owned by another national association.

The attack upon the tax in the Bank of Redemption case was made upon the ground that the shares in question *were personal property* and that the tax was therefore violative of section 5219 of the Revised Statutes, and subject to the restriction with respect to the taxation of personal property owned by national associations. In disposing of this claim the court said:

> "Another point to be noticed arises upon the third count of the declaration. It is therein alleged that other national banking associations, some located in Massachusetts, and others in the several New England States, are the owners of 1,448 shares of the capital stock of the National Bank of Redemption, on which the amount of tax paid was $2,051. It is urged in argument that these shares are not taxable by virtue of section 5219 of the Revised Statutes. The language of the section is: 'Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the association is located; but the legislature of each state may determine and direct the manner and place of taxing all the shares of

national banking associations located within the state, subject only to the two restrictions, that the tax shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state, and that the shares of any national banking association owned by non-residents of any state shall be taxed in the city or town where the bank is located, and not elsewhere.'

It is contended that no tax is thereby authorized upon the national bank itself as a corporation, nor upon the personal property of any such, and that, therefore, these shares in the National Bank of Redemption are exempt from taxation by virtue of their ownership. This, however, is not a reasonable interpretation of the language of the section. The manifest intention of the law is to permit the state in which a national bank is located to tax, subject to the limitations prescribed, all the shares of its capital stock without regard to their ownership. The proper inference is, that the law permits, in the particular instance, the taxation of the national banks owning shares of the capital stock of another national bank by reason of that ownership, on the same footing with all other shares."

If, as the court said

"The manifest intention of the law is to permit the state in which a national bank is located to tax, subject to the limitations prescribed, all the shares of its capital stock without regard to their ownership,"

it is equally manifest that the intention of the law is to compel the state in which a national bank is located

to tax all of the shares of capital stock of its own state banks without regard to their ownership, for this is one of the mandates of the law which must be first obeyed to enable the state to tax the shares of national banks at all.

The fundamental purpose that impelled Congress to enact section 5219 Revised Statutes, was the protection of national banks in the matter of state taxation, and to compel the administration of even-handed justice by the states in such matter of taxation.

The public policy that brought about the enactment of this section is well stated in

People vs. *Weaver*, 100 U. S. 539–543,

where this court said:

> "As congress was conferring a power on the states which they would not otherwise have had, to tax these shares, it undertook to impose a restriction on the exercise of that power, manifestly designed to prevent taxation which should discriminate against this class of property as compared with other moneyed capital. In permitting the states to tax these shares, it was foreseen—the cases we have cited from our former decisions showed too clearly—that the state authorities might be disposed to tax the capital invested in these banks oppressively.
>
> This might have been prevented by fixing a precise limit in amount. But congress, with due regard to the dignity of the states, and with a desire to interfere only so far as was necessary to protect the banks from anything beyond their

equal share of the public burdens, said, 'you may tax the real estate of the banks as other real estate is taxed, and you may tax the shares of the bank as the personal property of the owner to the same extent you tax other moneyed capital invested in your state.' It was conceived that by this qualification of the power of taxation equality would be secured and injustice prevented."

Again in

Mercantile Bank vs. *New York*, 121 U. S. 154,

the court said:

"The key to the proper interpretation of the act of congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people, and to facilitate the operations of the treasury of the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people, it was required that this capital, so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not subjects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the states in which they were located without the consent of congress, being exempted from the power of the states in this respect, because these banks were means and agencies established by congress in execution of the powers of the government of the United States. It was

deemed consistent, however, with these national uses, and otherwise expedient, to grant to the states the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the states from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the state, in levying such a tax, to create and foster an unequal and unfriendly competition by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of congress is to be read in the light of this policy."

From these cases it clearly appears that the object of Congress in enacting section 5219 of the Revised

Statutes was to compel the states to tax the moneyed capital in state banks to the same extent that they taxed the moneyed capital as represented by the stock in national banks, if the states determined to tax the stock in national banks at all.

By reason of this demand of Congress, this state, having decided to tax the shares of stock in national associations has been required and compelled to tax the moneyed capital in its state banks to the same extent as it taxes the shares of stock in national associations, and in the enactment of the constitutional provision of California, hereinbefore set forth, a specific and uniform rule, applicable to both state and national bank stock, has been enacted. This rule, when enforced, levies a tax upon all of the moneyed capital of state banks to the same extent and in the same manner as it levies a tax upon the shares of stock in national associations.

It takes but a moment's reflection to force the conclusion that if for any cause whatsoever any share or shares of stock in any one or more state banks are exempt from the tax levied by the constitution, then immediately a failure to tax all other moneyed capital to the same extent as shares in a national bank occurs.

Plaintiff in error would compel the state to exempt from taxation the shares of stock in the Mission Bank, owned by plaintiff in error, on the ground that shares of stock are personal property. If such claim should be allowed, then the moneyed capital of the Mission Bank would not be fully taxed, nor taxed to the same extent as the moneyed capital or the shares

of stock of plaintiff in error, and yet it is by reason of the requirement of section 5219, Revised Statutes, that all of these shares of stock in the Mission Bank must be taxed.

Ownership by a national bank of shares of stock in a state bank can not render those shares exempt from taxation, when such tax is levied by the state in compliance with the demand of the act of Congress. To accede to plaintiff's argument would open the way to defeat the act of Congress and the purpose of its enactment.

If the shares of stock in the Mission Bank owned by plaintiff in error are exempt from taxation, because they are personal property owned by a national bank, then, inasmuch as the moneyed capital of the Mission Bank is not and can not be taxed at the same rate as the tax levied upon the moneyed capital in national banks, it follows that the taxation of the shares of national banks, under the Constitution of California, will be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens.

If such result is held to be the legal effect of ownership by a national bank of shares of stock in a state bank, then all that national banks have to do to defeat any attempt to tax shares of stock in national banks at all will be to acquire some stock in state banks, thus making it impossible for the state to tax the moneyed capital in state banks to the same extent as national banks.

Out of 2,000 shares of the Mission Bank stock plaintiff in error owns 1,001 shares. The approval of plaintiff's claim of exemption from taxation on these 1,001 shares would be to hold that by reason of such ownership that number of shares of the moneyed capital of the Mission Bank is exempt from taxation, and the legal result flowing from the allowance of such claim would be the relief of that much of the moneyed capital of the Mission Bank from taxation, and thus approve the violation of the requirement of the act of Congress—an approval that, at the same time it approves of the violation of the requirement of the act of Congress, at one and the same time debars the state from taxing the shares of stock in national associations, because of the result of such approval.

That such should be the construction of the act of Congress does not appeal to the sense of justice, nor can such purpose be deduced from the statute which demands that the moneyed capital of the Mission Bank, as well as other state banks, must be assessed and taxed to the same extent as the stock of plaintiff in error, if the shares of stock in plaintiff's bank are taxed at all, in which event Congress has granted permission to tax the shares of stock in plaintiff's bank, *if other moneyed capital is equally taxed.*

The statute requires that the tax on national bank shares "must not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens," hence the tax upon "other moneyed

capital in the hands of individual citizens" must be as great as upon the shares of stock in national banks.

Whether a state has or has not complied with the requirement of Congress in this particular is not to be determined from the face of the statute, but from its practical application and the results thereof.

Davenport Bank vs. *Davenport*, 123 U. S. 23.

In further answer to the argument of plaintiff in error that section 5219 of the Revised Statutes does not authorize the levying of a tax upon shares of stock in a state bank owned by a national association, and compelling such national association, as a share holder in the state bank, to pay the tax upon such shares in the state bank, it would seem clear that the power to tax such shares exists, and the power to compel the payment of the tax upon such shares exists, when the demand of the act of Congress is that the tax must be imposed upon such shares as a prerequisite to the validity of taxation on shares of stock in national banks.

The conclusion of the Supreme Court of California upon this matter was stated in its decision as follows:

> "The respondent makes a further point. Since national banks constitute an agency of the United States, created for the carrying out of governmental purposes, property of such banks and shares of stock in the same can not be taxed by a state except in so far as such taxation is permitted by act of Congress. The requisite permission is granted by section 5219 of the Revised

Statutes. That section authorizes the several states to include all the shares of national banks in the valuation and assessment of personal property of the owner or holder of such shares, subject to the restrictions (1) that the tax shall not be at a greater rate than is assessed upon other moneyed capital, and (2) that shares owned by nonresidents of the state shall be taxed in the city or town where the bank is located. The claim is made that this statute does not authorize the assessment of the personal property of national banks to the banks, and that the state is not, therefore, authorized to assess to the plaintiff, through the Mission Bank, the plaintiff's shares in that bank. In *Bank of Redemption* vs. *Boston*, 125 U. S. 60, (31 L. Ed. 689, 8 Sup. Ct. Rep. 772), it was decided by the supreme court of the United States that section 5219 of the Revised Statutes does not prevent the taxation of the shares of a national bank in the hands of another national bank. No different rule could be applied to the taxation of shares in a state bank owned by a national bank without violating the provision of section 5219 requiring 'other moneyed capital' to be assessed at a rate equal to that imposed upon shares in national banks. If the section authorizes the taxation of shares owned by a national bank in another national bank, it must necessarily contemplate a like taxation of shares in state banks similarly owned."

Bank of California, National Association vs. *Roberts*, 173 Cal. 398–404.

The case of

Crocker vs. *Scott*, 149 Cal. 575,

cited by plaintiff in error affords no argument in support of plaintiff's contention made under the constitutional provision herein cited, which provides for the present method of taxing all moneyed capital in both state and national banks. This provision of the constitution did not exist at the time that *Crocker* vs. *Scott* was decided, and the method of taxing banks at the time of that decision was essentially different. The history and result of the change of this method of taxation is fully covered by the decision of the Supreme Court of California in this case.

The attack upon the tax in this case made by plaintiff in error upon the ground of discrimination has for its entire foundation an assumption.

For the purpose of substantiating its claim of discrimination and double taxation against plaintiff in error, plaintiff in error first assumes that the shares of stock in the Mission Bank owned by it as a stockholder are exempt from taxation; it then assumes that because such shares of stock are exempt from taxation, that the other moneyed capital in the hands of individual citizens is not equally taxed.

By reason of these two assumptions, plaintiff in error then argues that because the other moneyed capital is not equally taxed, and because under *Bank of Redemption* vs. *Boston*, the shares of Mills Bank stock owned by plaintiff in error are subject to taxation, that there is a double taxation in the case of

national bank stock and an exemption from taxation in the case of state bank stock.

The very argument made by plaintiff in error and predicated upon these assumptions demonstrates the soundness of our interpretation of the requirements of section 5219 of the Revised Statutes, as hereinbefore stated.

Plaintiff in error by its very claim of discrimination and double taxation and by its argument in support of such claims, has demonstrated the vice of such a construction of section 5219, Revised Statutes, and has demonstrated our contention that the construction of this act of Congress advanced by plaintiff in error would result in the relief of all national banks from taxation under similar circumstances.

As the contention made by plaintiff in error in this particular is unsupported by authority, and is but a corollary to their claim of exemption from taxation on the Mission Bank stock because such stock is personal property, and as the disposal of the main question must necessarily dispose of the corollary, we content ourselves with pointing out the basis of the claim of discrimination and double taxation, and

submit its decision with the main question which we have previously herein argued.

Respectfully submitted.

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